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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~1037~~ ~~632~~ 397 101

THE LAWRENCE MANUFACTURING COMPANY,
APPELLANT,

vs.

THE TENNESSEE MANUFACTURING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED SEPTEMBER 9, 1887.

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vs.

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a United States Circuit Court, Middle Dist. of Tennessee. In Chancery.

LAWRENCE MANUFACTURING CO.
vs.
TENNESSEE MANUFACTURING CO. } No. 2724.

i *Bill of Complaint.*

United States Circuit Court, Middle District of Tennessee. In Chancery.

LAWRENCE MANUFACTURING COMPANY
vs.
TENNESSEE MANUFACTURING COMPANY.

To the honorable the judges of the circuit court of the United States for the middle district of Tennessee, in chancery sitting:

The Lawrence Manufacturing Company, a body corporate under and by virtue of the laws of the State of Massachusetts and a citizen of said State, having its principal place of business at Lowell, in said State of Massachusetts, brings this, its bill of complaint, against the Tennessee Manufacturing Company, a body corporate under and by virtue of the laws of the State of Tennessee and a citizen of said State, having its principal place of business at Nashville, in said State of Tennessee.

I.

Thereupon your orator, complaining, says that since the date of its incorporation it has been engaged and is now engaged in the manufacture of sheetings and in the sale thereof throughout the United States and in other countries to others trading therein; that in said trade there are several standards or classes of goods generally recognized in this and in other countries, the first of which includes
ii sheetings of such weight that two and eighty-five one-hundredths (2.85) yards thereof will weigh a pound, the second of which includes sheetings of such weight that three yards thereof weigh a pound, and the third of which includes sheetings of such weight that four yards thereof weigh a pound; and, further, that while in said several classes of goods there are certain general characteristics such as weight, which, with comparatively slight variations, are common to all manufacturers of said respective classes, still, as between different manufacturers in corresponding goods as to classes, there are great differences of excellence and reputation as to the quality of the raw material used, the methods of and care in the manufacture, the toughness and lasting qualities of the goods made, and there are also great differences in the guarantees thereof by the respective rival manufacturers, growing not only out of their special guarantees specifically made, but also, and as a rule, out of the age, experience, and financial responsibility of the several manufacturers.

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The Lawrence Manufacturing Company, a body corporate under and by virtue of the laws of the State of Massachusetts and a citizen of said State, having its principal place of business at Lowell, in said State of Massachusetts, brings this, its bill of complaint, against the Tennessee Manufacturing Company, a body corporate under and by virtue of the laws of the State of Tennessee and a citizen of said State, having its principal place of business at Nashville, in said State of Tennessee.

I.

Thereupon your orator, complaining, says that since the date of its incorporation it has been engaged and is now engaged in the manufacture of sheetings and in the sale thereof throughout the United States and in other countries to others trading therein; that in said trade there are several standards or classes of goods generally recognized in this and in other countries, the first of which includes
ii sheetings of such weight that two and eighty-five one-hundredths (2.85) yards thereof will weigh a pound, the second of which includes sheetings of such weight that three yards thereof weigh a pound, and the third of which includes sheetings of such weight that four yards thereof weigh a pound; and, further, that while in said several classes of goods there are certain general characteristics such as weight, which, with comparatively slight variations, are common to all manufacturers of said respective classes, still, as between different manufacturers in corresponding goods as to classes, there are great differences of excellence and reputation as to the quality of the raw material used, the methods of and care in the manufacture, the toughness and lasting qualities of the goods made, and there are also great differences in the guarantees thereof by the respective rival manufacturers, growing not only out of their special guarantees specifically made, but also, and as a rule, out of the age, experience, and financial responsibility of the several manufacturers.

II.

Further that, to wit, prior to the year A. D. 1870, this complainant adopted and thereupon became duly vested with the exclusive right to use a label or trade-mark for all goods of its manufacture coming within said third class to distinguish sheetings of its manufacture from sheetings of the same general class manufactured by others, the substantive, distinctive, and chief feature of which label was and is an arbitrary sign or symbol consisting of the capital letters "L L" prominently and separately appearing upon such label or stamp; and said trade-mark, with certain environments, which have been changed from time to time, has been so used by complainant since said date of adoption and, to wit, for more than fifteen years, and has been imprinted upon each and every piece or bolt of such sheetings of said third general class made and sold by complainant during said period; and, further, said trade-mark was so adopted by your orator for the purpose of distinguishing sheetings of its manufacture of said third general class from iii similar goods manufactured by others and then known in the trade under distinctive trade-marks, such, for instance, as the manufactures known as "Agawam F's" and "Atlantic P's."

In connection with said trade-mark or substantive element of said label, under and in connection with which the trade reputation of complainant has been established as hereinafter is alleged, complainant has used the words "Lawrence Mills" and the word "sheetings" in different juxtapositions, and also at times a picture or representation of a bull's head, and at other times a picture or representation of a "bull rampant"—that is, of the whole body of a bull in a rampant position, and in connection therewith and underneath the same, and in a separated position, has always used said capital letters "L L" as and for the purpose aforesaid.

III.

Your orator further shows unto your honors that at great expense and by years of endeavor your orator has earned and acquired a trade reputation of great value as manufacturers of said sheetings under its said trade-mark, with this result, that sheetings of the said third general class of your orator's manufacture have come to be universally known as "L L sheetings," and sheetings so known, named, and called for import the excellent raw material, the method and care of manufacture, and the general guaranty of excellence and lasting quality for which your orator has a long, valuable, and thoroughly established reputation as to all goods of its manufacture; further, that (until and except for the infringement, deceit, and fraud hereinafter complained of, and other similar infringements) complainant had succeeded in introducing and selling sheetings under said trade-mark (for the year preceding the infringement hereinafter complained of) to an amount equal for each week of the year to about five hundred and fifty thousand yards; further, that such has been and is the general reputation in the trade of said

sheetings so made and marked by complainant that when a
iv consumer calls upon a retailer of such goods for "L L sheetings" it has been generally understood that such consumer desires sheetings of the manufacture of your orator; further, that such is the reputation of said sheetings so made and marked by complainant that it has become necessary for dealers generally to keep supplied with such sheetings made by complainant to supply the demand for the same; and, further, that (since the infringement, deceit, and fraud herein complained of, pursuant to which sheetings of said general class have been furnished by infringers to retail dealers at greatly reduced prices) a habit has recently grown up among many of said retail dealers to keep such a supply of your orator's goods on hand, but concealed, and to keep a supply of the goods of such infringers on hand and in sight, and with the latter to supply general demands for "L L sheetings" made by consumers who have not been made aware of said infringement, fraud, deceit, and spurious goods, and only to deal out the genuine "L L sheetings," to wit, sheetings of said general class made by your orator, to those who are informed of said piracy upon the trade-mark, trade label, and trade reputation of your orator, as aforesaid, and who question the spurious goods so offered—that is to say, to those who specially ask for "L L sheetings" made by your orator.

IV.

Further, your orator shows unto your honors that since your orator became vested, and while your orator continued to be vested, with the exclusive right to the use of said trade-mark, so as aforesaid, to wit, from the first day of January, 1884, to the present time, the said Tennessee Manufacturing Company, defendant herein, has been manufacturing and selling at the said city of Nashville, and within said middle district of Tennessee, and elsewhere, large quantities, but what quantities your orator is unable to state, of sheetings of said general third class, but whether, also, of an inferior quality your orable is unable to state, upon which, and for
the purpose of taking advantage of your orator's trade label,
v trade-mark, and trade reputation, said defendant has placed a stamp or label in imitation of the stamp or label of your orator, and so, in imitation thereof, as to tend to deceive the public, and has upon its said stamp or label upon said sheeting printed or stamped the capital letters "L L" prominently and separately from the other parts of its said label, the said defendant's stamp being as follows: The word "Cumberland" is printed in one horizontal line, underneath which is also printed in a horizontal line the word "sheetings," underneath which latter word are the figures 4–4, and underneath these figures are the letters "L L," which figures are separated from the word "sheeting" by twice the space which separates the words "sheeting" and "Cumberland."

V.

Your orator, further complaining, says that said defendant

corporation has been recently organized, and, as your orator is informed, that it commenced the sale of goods of this character some time in the month of January, A. D. 1884, and that, excepting possibly in and about the vicinity of the said city of Nashville, the public at large would not learn from an inspection of said defendant's label where or by whom said goods were made, except as said trade-mark "L L" would indicate that said goods were made by your orator.

VI.

And your orator, further complaining, charges that the said acts and doings herein complained of manifestly tend to deceive the public, constitute in law a fraud upon the public as well as upon your orator, which in equity should be enjoined; and, further and specially, that the appropriation and wrongful use of the said letters "L L" was for the purpose and with the tendency and effect of appropriating a part at least of the good will and trade reputation of your orator, and thus and by means thereof, in deception and fraud, to introduce at once into public favor the sheetings of said defendant to the damage of complainant.

VII.

Your orator, further complaining, on information and belief charges that the said defendant, so wrongfully attempting to take advantage of your orator's trade-mark, trade label, and trade reputation, has sold goods branded so, as is hereinbefore alleged, of an inferior weight and quality, and has sold to the public sheetings weighing less than four yards to the pound, representing by said label to the public that said sheetings were of the quality of the "L L" sheetings heretofore manufactured by your orator, wherein a fraud upon the public as well as upon your orator has been committed, which should be enjoined.

VIII.

And by reason of such unlawful acts and doings on the part of defendant great and, in part, irreparable injury and damage has been done, is being done, and is threatened to be done to your orator, and great gains and profits to a large sum of money have accrued to the said defendant from the use of your orator's exclusive rights, the full amount of which is unknown to your orator, but which in equity belongs to your orator and should be accounted for by the said defendant as damages to your orator, and paid over to your orator as the avails of its exclusive rights aforesaid and as profits and gains which your orator would have derived from its said exclusive rights, but for the unlawful acts of the said defendant.

To the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief herein prayed, and may, upon the corporal oath of its proper officer with regard to the certain specified interrogatories hereto annexed and numbered 1 and 2, but without oath as to the residue of this bill (an answer on oath, except

with regard to said specified interrogatories, being hereby expressly waived), and, according to the best and utmost of *his* knowledge, remembrance, and belief, full, true, and perfect answer make to all and singular the premises, and that it may be decreed to account for and pay over to your orator all gains and profits realized by it, and also the damages suffered by your orator from the unlawful vending of sheetings
vii so stamped or marked as aforesaid, and may be perpetually restrained by an injunction to be issued out of this honorable court from making, using, or vending any stamp or label upon sheetings involving the use of said combination of letters or any imitation thereof, and also any imitation of your orator's label as hereinabove described, and that your orator may have such other or further relief as equity may require and to your honors may seem meet:

May it please your honors to grant unto your orator a writ of injunction conformable to the prayer of this bill until the further order of this court, and also a writ of subpœna directed to the said defendant, The Tennessee Manufacturing Company, and commanding it, at a certain time and under a certain penalty, to appear before your honors, then and there to answer unto this bill of complaint and to abide by and perform such decree as the court shall make in the premises; and your orator will ever pray, etc.

LAWRENCE MANUFACTURING CO.,
By LUCIUS M. SARGENT, *Treasurer.*

RAYMOND & RAINEY,
Solicitors for Complainant.
J. H. RAYMOND, *Of Counsel.*

Duly sworn to by Lucius M. Sargent.

Interrogatories Referred to in the Annexed Bill of Complaint.

First interrogatory. State whether defendant has sold any number, and, if so, what number, of pieces or bolts of sheeting stamped or marked with said capital letters "L L."

Second interrogatory. State whether defendant has sold any number, and, if so, what number, of pieces or bolts of sheeting
viii stamped with said words and letters "L L," as in said bill is charged.

RAYMOND & RAINEY,
Solicitors for Complainant.

J. H. RAYMOND, *Of Counsel.*

* * * * * * *

ix And thereupon the defendant filed, May 10th, 1887, the following answer thereto:

The Answer of The Tennessee Manufacturing Company, Defendant, to the Bill of Complaint of The Lawrence Manufacturing Company, Complainant.

This defendant, now and at all times hereafter saving and reserving to itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

I.

Defendant admits the citizenship of complainant and defendant as stated, and that they are both bodies corporate created by the respective States as alleged. Defendant admits that complainant manufactures and sells sheetings, but does not know to what extent; it admits that in the trade of sheetings there are several recognized classes based upon the difference in weight of the goods per yard, and among them are four classes as set forth by complainant—that is, one of such class or grade that two and eighty-five one-hundredths yards thereof weigh a pound, another of such class that three yards thereof weigh a pound, another of such class that four yards thereof weigh a pound, and another of such class that five yards thereof weigh a pound. Defendant admits that the products of different manufacturers, though coinciding in the standard of weight, differ in texture, quality, and durability. As to the alleged differences in guaranties, special or implied, defendant knows nothing.

II.

Defendant denies that either prior to the year A. D. 1870 or at any other time complainant adopted and thereupon became duly vested with the exclusive right to use a label or trade-mark for all goods of its manufacture coming within the said third class, as defined in complainant's bill, having as its substantive, distinctive, and chief feature a symbol consisting of the capital letters L L, prominently and separately appearing on such label or stamp.

Defendant denies that at the time alleged, or before or since, complainant adopted or has used said symbol for the purpose of distinguishing sheetings of its manufacture from similar goods manufactured by others. Defendant admits that complainant has

x used said letters L L upon sheetings of said third class and has also impressed upon said goods the words "Lawrence Mills" and the word "sheetings," and at times the representation of a bull rampant, but charges that the words "Lawrence Mills" were used to designate that the goods were made by complainant and to distinguish its manufacture from sheetings of said third class made by others, and that the representation of the bull and the words

"Lawrence Mills" constituted complainant's trade-mark, if it has any, and that the letters "L L" were used solely to denote the class or grade of sheetings on which they were impressed.

III.

Defendant denies that complainant has acquired a valuable trade as manufacturers of said sheetings under said letters as a trade-mark, or in any way based upon them as a trade-mark; that it has acquired a reputation for making a good quality of sheeting of said third class is true, but that said reputation is dependent upon or connected with the use of said letters as a trade-mark is denied. Defendant denies that sheetings of said third class of complainant's manufacture are universally known as "L L sheetings," and that when a consumer calls upon a retailer of such goods for "L L sheetings," it has been generally understood that complainant's manufacture is meant to be designated. On the contrary, it is generally understood in the trade and by consumers that the said capital letters "L L" are placed on sheetings weighing one-fourth of a pound to the yard to designate sheetings of that class, and that they are thus used in common by all manufacturers of sheetings of this weight. In short "L L" upon sheetings means "four-yard sheetings" in the parlance of the trade. Complainant's sheetings thus stamped are known in the trade as "Lawrence L L sheetings" and defendant's are known as "Cumberland L L sheetings." The same class of goods of other well-known makers in the United States are marked L L, and are known and distinguished according to their respective trade-marks, denoting origin, as "Aurora L L," "Buckeye L L," "Beaver Dam L L," "Badger State L L," "Clarion L L," "Crescent City L L," "Hoosier State L L," "Indiana Standard L L," "Graniteville L L," "Forest City L L," "Pacolett L L." Defendant files as part of its answer the labels of several manufacturers impressed upon and actually used upon sheetings of said third class, marked Exhibits A, B, C, D, and E. A consumer wishing to purchase sheetings of said third class designates them as L L sheetings and always indicates, in addition, the particular manufacture of L L sheetings desired. Complainant, as defendant is informed and believes, manufactures, besides the "Lawrence L L sheetings," xi —of the same weight and class, but of a different quality, and brands them "Shawmut," with the addition of the said capital letters L L, impressed upon them the same as upon those branded "Lawrence Mills." Purchasers buying L L sheetings made by complainant are forced to designate the quality desired by ordering "Lawrence L L," or "Shawmut L L," as the case may be.

IV.

Defendant admits that it has heretofore, since April, 1885, manufactured and is now manufacturing and selling in Nashville and elsewhere Cumberland L L sheetings, weighing one-fourth of a pound to the yard, but it denies that for the purpose of taking advantage of complainant's trade it has placed on said goods a stamp or label in

imitation of complainant's stamp or label, with intent to and with the effect of deceiving the public.

Defendant has stamped upon said sheetings the words "Cumberland" and "sheetings" in horizontal lines, with the figures 4–4 beneath them and with the capital letters "L L" below the figures 4–4. Defendant used the word "Cumberland," the name of the well-known river near which its works are located, to designate its manufacture and as a trade-mark, and it is so known and accepted generally wherever defendant's goods are sold. It used the word "sheetings" to denote the general character of goods, the letters "L L" to denote the class to which they belong, and the figures 4–4 to indicate that the goods are one yard wide. Defendant denies that its stamp or label bears any resemblance to that of complainant, or that even the most casual observer would take one for the other. Defendant files herewith, as part of its answer, Exhibit "F," which is complainant's label in actual use upon sheetings of said third class, and *of* Exhibit "G," which is defendant's label in actual use upon said goods.

V.

Defendant denies that it has sold with the stamp or label designated goods of less weight than it claims the said letters indicate, with the qualification that there may exist slight variancies above or below the standard, mathematical exactness not being uniformly attainable by any manufacturer. Complainant's goods, by actual weight, vary as far from said standard as those of defendant. That the goods made by defendant of that class are not of as fine quality as those made by complainant under the "Lawrence Mills" brand may be true. There is great variance in the mere texture of this class of goods among all manufacturers, but the class is fixed by the standard of weight and is not affected by texture. This is not a fraud upon or a deception of the public. It is well understood by the trade and consumers that the letters "L L" have no
xii significance as indicating class or grade based solely upon weight. Defendant's goods, stamped as stated, come as clearly within said third class as those of complainant or any other manufacturer.

VI.

Defendant says that complainant cannot lawfully set up any claim to the exclusive use of the capital letters "L L," as described in said bill, as a trade-mark, for they do not indicate any origin or ownership of the goods on which they are impressed, and, therefore, do not, as described and claimed, have the characteristics essential for making them a lawful trade-mark. The words "Lawrence Mills" used on complainant's label indicate the origin of said goods and plainly advertise that they are made by complainant. The letters "L L" neither suggest nor emphasize that fact and as indicators of origin or ownership are utterly useless. They are never used by themselves by complainant, but always in connection with the name of complainant's mills. Standing alone they convey no meaning.

Before complainant used them, as defendant is informed and believes, the said capital letters "L L" were stamped and used by the "Atlantic Mills," in the United States of America, on a grade of sheeting manufactured by them. Said letters are not and have never been by the trade and general public accepted as a trade-mark of complainant or as forming an element of the same, but their accepted signification is that they represent a class of goods and not origin or ownership. Many classes of cotton goods are manufactured in the United States and many letters of the alphabet are used to designate classes and they are so understood in the trade. Complainant uses other letters upon other classes of its manufacture of goods to indicate the class, but does not use said capitals "L L," except upon goods of said third class.

VII.

Defendant further shows that complainant fails to allege that it first adopted and used this symbol as a trade-mark upon sheetings before any other person adopted and used it upon sheetings. Complainant thus fails to allege the existence of a fact essential to the foundation of its claim to it as a trade-mark. It cannot, therefore, question defendant's use of said letters "L L" upon goods of said general character.

VIII.

Defendant denies that complainant is entitled to the relief or any part thereof demanded in said bill and prays the same advantage of this answer as if it had pleaded or demurred to said bill of
xiii complaint, and prays to be dismissed with its reasonable costs and charges.

[CORPORATE SEAL.] TENNESSEE MANUFACTURING COMPANY,
By H. W. GRANTLAND,
V. P., Acting President.

DICKENSON & FRAZER, *Solicitors.*

UNITED STATES OF AMERICA.

STATE OF TENNESSEE, *County of Davidson:*

George M. Goodwin, being duly sworn, makes oath that he is treasurer of said Tennessee Manufacturing Company, defendant in the foregoing answer; that he has read and knows the contents of said answer and that the same is true of his own knowledge, except as to matters which are therein stated to be on information and belief, and as to those matters he believes them to be true.

GEORGE M. GOODWIN.

Subscribed and sworn to before me May 10th, 1886.

[U. S. Circuit Court Seal.]

CHAS. NASH,
Deputy Clerk.

And thereupon the complainant filed, on June 5th, 1886, its replication to the said answer of defendant as follows, to wit:

xiv *Replication.*

The replication of Lawrence Manufacturing Company, complainant, to the answer of the Tennessee Manufacturing Company, defendant.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that it will aver and maintain and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

RAYMOND & RAINEY,
Sol's for Comp'nt.

J. H. RAYMOND, *of Counsel.*

" Filed June 5th, 1886."

LEWIS T. BAXTER, *Clerk.*

Stipulations.

No. 1.

In this cause it is agreed that the defendant may take testimony by depositions before any notary public or justice of the peace upon notice by letter giving the name of the town and State, said letter to be addressed and mailed to Messrs. Raymond & Rainey, 44 Honore building, Chicago, Illinois, solicitors for complainant, at least ten days before the day appointed for beginning; the notice need not name all the witnesses, nor the notary public, nor justice of the peace, and all formalities as to commission, caption, certificate, return, and publication, etc., are waived, and the depositions shall be delivered to defendant's solicitor, to be by him filed with the clerk. A press copy of such letters filed with the depositions, with a certificate by the solicitor of defendant that the same was mailed and addressed as stipulated, shall be *prima facie* evidence of these facts.

It is further agreed that either of the parties hereto may use
xv at the trial copies of any of the proof that may be taken by the respective defendants in the suit of The Lawrence Manufacturing Company *vs.* The Aurora Cotton Mills, pending in the U. S. circuit court for the northern district of Illinois, in equity, and in the

cause of The Lawrence Manufacturing Company *vs.* The Evansville Cotton Manufacturing Company, pending, in equity, in the U. S. circuit court for the district of Indiana, just the same as though they were originally depositions taken by defendant in this cause; said copies may be certified as correct by any solicitor of record of said respective defendants, and the same shall be sufficient, only such exceptions may be made as could properly be made in the original suits in which they are taken.

Complainant shall close its proof-in-chief by October 1st, 1886, and defendant shall close its testimony within such time after the complainant shall have closed its testimony-in-chief as the complainant shall have had, estimating from May 18th, 1886, up to the time of the conclusion of its proof; but in case complainant shall give defendant notice at any time before October 1st, 1886, that it has concluded its proof, then the period fixed for closing the defendant's proof shall be estimated from the date of the receipt of said notice. The complainant shall have sixty days, in the absence of an order of court, after the expiration of defendant's time or sixty days after defendant shall notify complainant that it has closed within which to take evidence strictly in rebuttal.

It is understood that this stipulation shall not conclude either party from applying to the court, on good cause shown upon notice to the opposite party, for an extension of the time for taking the applicant's proof. The limitations herein contained do not apply to the taking of proof in the other causes mentioned, both parties being entitled to the use of said copies, as stipulated, whenever such proof may be taken in said causes. The complainant may file a printed copy in this case of all the evidence taken by it, as to which this defendant has received proper notice or has appeared at the taking by solicitor, and such copy certified by a solicitor of record for complainant shall be deemed a sufficient record, provided the original shall have been filed in said case of complainant against the Aurora Cotton Mills.

Signed in duplicate, at Chicago, Illinois, July 28th, 1886.

J. M. DICKENSON,
Sol. for Defendant.
RAYMOND & RAINEY,
Solicitors for Comp'nt.

xvi "Filed April 9th, 1887."

H. M. DOAK, *Clerk.*

No. 2.

In this cause it is agreed that copies of all stipulations heretofore made in the cases of Lawrence Manufacturing Company *vs.* Aurora Manufacturing Company and the Same *vs.* Evansville Manufacturing Company may be used in this cause under the stipulations made at Chicago in this cause the same as if such stipulation were depositions taken in said causes.

J. M. DICKENSON,
Sol. for Defendant.
RAYMOND & RAINEY,
Sol's for Complainant.

And thereupon the complainant filed, on June 5th, 1886, its replication to the said answer of defendant as follows, to wit:

xiv *Replication.*

The replication of Lawrence Manufacturing Company, complainant, to the answer of the Tennessee Manufacturing Company, defendant.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that it will aver and maintain and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

RAYMOND & RAINEY,
Sol's for Comp'nt.

J. H. RAYMOND, *of Counsel.*

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It is further agreed that either of the parties hereto may use
xv at the trial copies of any of the proof that may be taken by the respective defendants in the suit of The Lawrence Manufacturing Company *vs.* The Aurora Cotton Mills, pending in the U. S. circuit court for the northern district of Illinois, in equity, and in the

cause of The Lawrence Manufacturing Company *vs.* The Evansville Cotton Manufacturing Company, pending, in equity, in the U. S. circuit court for the district of Indiana, just the same as though they were originally depositions taken by defendant in this cause; said copies may be certified as correct by any solicitor of record of said respective defendants, and the same shall be sufficient, only such exceptions may be made as could properly be made in the original suits in which they are taken.

Complainant shall close its proof-in-chief by October 1st, 1886, and defendant shall close its testimony within such time after the complainant shall have closed its testimony-in-chief as the complainant shall have had, estimating from May 18th, 1886, up to the time of the conclusion of its proof; but in case complainant shall give defendant notice at any time before October 1st, 1886, that it has concluded its proof, then the period fixed for closing the defendant's proof shall be estimated from the date of the receipt of said notice. The complainant shall have sixty days, in the absence of an order of court, after the expiration of defendant's time or sixty days after defendant shall notify complainant that it has closed within which to take evidence strictly in rebuttal.

It is understood that this stipulation shall not conclude either party from applying to the court, on good cause shown upon notice to the opposite party, for an extension of the time for taking the applicant's proof. The limitations herein contained do not apply to the taking of proof in the other causes mentioned, both parties being entitled to the use of said copies, as stipulated, whenever such proof may be taken in said causes. The complainant may file a printed copy in this case of all the evidence taken by it, as to which this defendant has received proper notice or has appeared at the taking by solicitor, and such copy certified by a solicitor of record for complainant shall be deemed a sufficient record, provided the original shall have been filed in said case of complainant against the Aurora Cotton Mills.

Signed in duplicate, at Chicago, Illinois, July 28th, 1886.

J. M. DICKENSON,
Sol. for Defendant.
RAYMOND & RAINEY,
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xvi "Filed April 9th, 1887."

H. M. DOAK, *Clerk.*

No. 2.

In this cause it is agreed that copies of all stipulations heretofore made in the cases of Lawrence Manufacturing Company *vs.* Aurora Manufacturing Company and the Same *vs.* Evansville Manufacturing Company may be used in this cause under the stipulations made at Chicago in this cause the same as if such stipulation were depositions taken in said causes.

J. M. DICKENSON,
Sol. for Defendant.
RAYMOND & RAINEY,
Sol's for Complainant.

"Filed April 9th, 1887."

H. M. DOAK, *Clerk.*

Stipulation No. 2, made at Louisville, Ky., October 7th, 1886.

xvii At April term, 1887, of the court afore-styled—present and presiding, the Hon. Howell E. Jackson, United States circuit judge, &c.—the following proceedings were had, to wit:

Order.

"This cause came on regularly to be heard on the call of the docket upon Monday, the 18th day of April, 1887, but the solicitors for complainant being absent and defendants, by their solicitor, agreeing thereto, the hearing of the cause was fixed by the court for Thursday, April 21st, 1887. On April 21st complainant appeared, by its solicitor, W. G. Rainey, and moved the court that the hearing of this cause be fixed for Thursday, April 28th, 1887, and, defendant's counsel consenting thereto on condition that the trial be begun and concluded at this term, it was ordered by the court that the trial of this cause begin upon April 28th, 1887, and be concluded before the adjournment of this court."

And said cause was so begun, as ordered, upon April 28th, 1887, and thereupon the complainant, by its solicitors, read the following depositions, to wit:

1 *Evidence for the Complainant.*

United States Circuit Court.

Northern District of Illinois.

LAWRENCE MANUFACTURING CO. *v.* AURORA COTTON MILLS.

District of Indiana.

SAME *v.* EVANSVILLE COTTON M'F'G CO.

Middle District of Tennessee.

SAME *v.* TENNESSEE M'F'G CO.

Eastern District of Wisconsin.

SAME *v.* BEAVER DAM COTTON MILLS.

W. G. Rainey, Esq., appears for complainant.

A. J. Hopkins, Esq., for Aurora Cotton Mills and Beaver Dam Cotton Mills.

Duncan C. Givens, Esq., for the Evansville Cotton M'f'g Co.

J. M. Dickinson, for the Tennessee M'f'g Co.

Depositions taken May 18, A. D. 1886, on the part of the complainant at the office of and before Charles F. Wolcott, Esq., a notary public, at No. 10 Tremont street, in the city of Boston,
2 Massachusetts, by consent of all parties above represented; all formalities as to time and place of taking said depositions being waived; also all formalities as to caption and certificate.

It being understood that the said depositions shall be delivered by the notary to W. G. Rainey, Esq., solicitor for complainant, to be by him retained for the purpose of having copies of the same taken and furnished to solicitors of the defendants, respectively.

It also being understood that each party shall have the privilege and benefit of any objection or exception to any question or answer on the trial as fully and completely as though such objections or exceptions were specially noted at the time of the asking of the question or giving the answer. It is also admitted that the complainant is a corporation under the laws of Massachusetts.

John Kilburn.

Direct examination by Mr. RAINEY:

Int. 1. Please state your name, age, residence, and occupation.

Ans. John Kilburn; fifty-five years old; Lowell, Massachusetts; my present business is that of cotton manufacture; I am in the employ of the Lawrence Manufacturing Co., the complainant in these causes.

Int. 2. Please state in what capacity you are employed by the complainant and how long you have been so employed.

Ans. As local agent, for eight years. I have the entire charge of the works—their manufacturing at Lowell.

Int. 3. Please state what familiarity and experience you
3 have had with the manufacture of cotton sheetings, and if your experience is such as to warrant you in claiming to be an expert in the manufacture of cotton sheetings state what it is.

Ans. What do I understand the word sheetings to mean?

Int. 4. Question 3 repeated.

Ans. My experience has been varied. I desire to know what width or widths of cloth the word sheetings is intended to cover.

Int. 5. From an inch up to six feet?

Ans. I had an experience of four years as manager of the steam mill at Providence, R. I., making goods from 28½ inches to 38½ inches in width, from June 1, 1859, to February 1, 1863; also had experience as manager of the Naumkeag Mills at Salem, Mass., from February 1, 1863, up to January 15, 1878; also my eight years' experience with the Lawrence Manufacturing Co., at Lowell.

Q. 6. Previous to your being manager at the steam mill at Providence what business were you engaged in for five or ten years?

Ans. For five years previous to that I filled the position of master machinist for the Lonsdale Company, at Lonsdale, R. I., which company was engaged in the manufacture of sheetings.

Q. 7. What was the Naumkeag Mills at Salem, Mass., engaged in manufacturing?

Ans. They manufactured a variety of cotton cloths, sheetings, and shirtings of numerous widths, ranging from 28 inches up to 104 inches in width.

Q. 8. Can you state that you have been familiar during this period of time, from 1854 up to 1886, with the different kinds of sheetings manufactured for the market? You may confine your answer to the weight rather than the width of sheetings. Should you answer you have been so familiar, please state what kinds of goods have been so manufactured.

4

Ans. From 1854 to 1859 I cannot say that I was familiar with a variety of brands or weights outside of the Lonsdale Company's mills. Since 1859 I have been familiar with the different kinds of sheetings manufactured in the market. I have been familiar with weights ranging from one yard to the pound up to ten yards to the pound.

Q. 9. Please state what are the principal standards of goods with reference to the number of yards to the pound.

Ans. What is meant by the word standard?

Q. 10. Will you state whether or not there have been manufactured for the trade sheetings weighing 2.85-100ths yards to the pound, 3 yards to the pound, and 4 yards to the pound?

Ans. There have been a great many manufactured of each.

Q. 11. Are such goods known in the market as standard sheetings?

Ans. A standard sheeting is known in the market as weighing 2.85-100ths yards to the pound and 36 inches wide, but every grade of cloth has a standard for its weight and width with the manufacturers who produce it and the merchants who sell it for them.

Q. 12. Would you call sheetings a yard wide, 3 yards to the pound, a standard sheeting also?

Ans. No, sir.

Q. 13. Would you call one 4 yards to the pound a standard sheeting?

Ans. No, sir.

Q. 14. What would you call them to show the distinction between the same, these several classes of sheeting above spoken of?

5

Ans. I should call them 3-yard sheeting, or by whatever their weight might be.

Q. 15. Whether 4-yard, 5-yard, or any other weight?

Ans. Yes, sir.

Q. 16. Are these goods known generally to the trade as 3-yard goods or 4-yard goods, or whatever it may be?

Ans. They are known as 3-yard or 4-yard goods, or whatever it may be, to the merchants that I have come in contact with.

Q. 17. At the time you began to work for the complainant company state what kind of sheetings it was making, if any.

Ans. Making two kinds—plain sheetings—one brand known as "X X," weighing 3 20-100ths yards to the pound; also another kind, weighing 4 yards to the pound.

Q. 18. How were these 4-yard goods branded and known to the trade?

Ans. Known as double L's, and branded "L L."

Q. 19. What have you to say as to the quality of these "L L" goods when compared with other 4-yard goods in the market with which you are familiar?

Ans. They differ from most other 4-yard goods, inasmuch as they have a better appearance after they have been in use a reasonable period of time; they do when they are new. I make this statement as the result of experience with them in my own household.

Q. 20. Do you know anything about the reputation of the "L L" sheetings made by the complainant Co.?

Ans. I can only say that the reputation has been such as to constantly increase the demand for them during my connection with the company.

6 Q. 21. Can you give any data of such increase from the time you commenced to work for the company up to October 31, 1885?

Ans. The product for the first six months, after my connection with the establishment, ending April 27, 1878, was 5,099,906 yards, and for the six months ending October 31, 1885, was 13,751,136 yards.

Q. 22. What have you to say as to the uniformity in quality of these "L L" goods during this period of time?

Ans. They have always been made of as uniform quality of staple weight and perfection as it has been possible for us to make them.

Q. 23. Why were you so particular?

Ans. On account of the instructions received from the treasurer and selling agents.

Q. 24. Do you know what those instructions were? And, if so, state what reasons were given you why the instructions were made.

Ans. The reasons were that they were unwilling to have any change made, for fear of damaging the reputation of the goods in the market or with the trade, as the demand for them exceeded the demand for any other 4-yard sheeting in the market known to them.

Q. 25. What have you to say about any effort made to change the quality of these "L L" sheetings, and how did such effort result?

Ans. We attempted to make these goods, "L L" sheetings, in a different way from what they were regularly made on two occasions, and the goods so irregularly made were condemned by the selling agents, and a portion of them returned to the mill as not looking like our regular "L L" goods.

7 Q. 25½. What was the change that was made in the weight or how?

Ans. Simply in the method of spinning the filling.

Q. 26. At or about the 1st of January, 1867, what knowledge have

you as to 4-yard sheetings being in the market, and how were they branded or known?

Ans. At the Naumkeag Steam Cotton Co.'s works we produced two brands of 4-yard sheetings, one known as "C," by the letter "C," and one known as "Belmont," being stamped with the name "Belmont." The demand for both these classes of goods ceased before I dissolved my connection with the company. At the same date the Lonsdale Co. were producing large quantities of 4-yard goods which were stamped "L B S."

Q. 27. At or about January 1, 1867, had you any knowledge of 4-yard sheetings that were known and stamped as "Agawam F's" or "Atlantic P's?"

Ans. I frequently saw both these brands in the jobbing stores in Boston and New York at about that time.

Q. 28. Do you know of any other 4-yard goods in the market at about this time; and, if so, how were they branded?

Ans. I did know of a large variety of 4-yard goods being on the market at that time, but I am now unable to specify the letters by which they were known?

Q. 29. At that time were any 4-yard sheetings branded with "L L," so far as you know?

Ans. None that I can recall.

Cross-examination by Mr. HOPKINS, for defendants in all cases:

X Q. 30. Do you know sheetings recognized in the trade as "Shawmut L L?"

8 Ans. I know such a sheeting in the market.

X Q. 31. How long has the "Shawmut L L" been in the market?

Ans. I have known it ever since my connection with the Lawrence Co.'s mill at Lowell.

X Q. 32. Didn't you know it before you went there?

Ans. No; I did not.

X Q. 33. Wasn't it in the market before you went to work for the Lawrence Co.?

Ans. It may have been.

X Q. 34. Complainant was manufacturing the "Shawmut L L" when you commenced to work for it, was it not?

Ans. They were not manufacturing it, but the goods so stamped were made up of pieces of our regular "L L" goods that were off-standard only.

X Q. 35. Was not complainant putting in the market sheeting known in the trade as "Shawmut L L" when you commenced to work for it?

Ans. Only to the extent of the off-standard pieces of regular "L L."

X Q. 36. Last question repeated. Mr. Kilburn, I want a direct answer.

Ans. They were manufacturing their regular "L L" goods, and all pieces that were off-standard were stamped "Shawmut."

X Q. 37. Question 35 repeated.

Ans. No; only to the extent that I have previously stated.

X Q. 38. Is it not a fact that when you commenced work for complainant it was putting in the market for sale a kind of sheeting known in the trade as "Shawmut L L?"

9 Ans. Yes; to the extent to which I have specified only.

X Q. 39. Have I asked you as to the extent to which they were putting such goods on the market?

Ans. No; but you have asked me a question which I could not answer without specifying the extent of their production, as no goods were being manufactured with the intention of stamping them Shawmut, except those of the regular "L L" make, which were off-standard.

X Q. 40. Then, do I understand you that "Lawrence L L" and "Shawmut L L" are two different standards of sheeting?

Ans. They are one and the same thing, except as to slight imperfections, which make them off-standard.

X Q. 41. Which is the off-standard, the "Lawrence L L" or the "Shawmut L L?"

Ans. Shawmut.

X Q. 42. Off-standard from what?

Ans. From the standard quality of our regular "L L" goods.

X Q. 43. How do you brand your regular "L L" goods you speak of?

Ans. Stamp them "L L."

X Q. 44. Is that all?

Ans. Also with the name of the Lawrence Co. and a bull's head.

X Q. 45. How do you brand the sheeting you call off-standard?

Ans. Stamp it "L L Shawmut," and a head with a helmet.

X Q. 46. Wherein do those two grades of goods differ in standard?

Ans. In the slight imperfections incident to their manufacture.

10 X Q. 47. Is not the "Shawmut L L" sold for a less price in the market than the "Lawrence L L?"

Ans. I cannot give you any information about the prices of these goods in the market, but, ordinarily, goods with slight imperfections are sold for less money than standard goods.

X Q. 48. How many years has complainant been putting the Shawmut "L L's" on the market?

Ans. I cannot answer the question.

X Q. 49. How long to your knowledge?

Ans. Since 1878 to the extent I have named.

X Q. 50. Did I ask you to what extent they had been putting the "Shawmut L L" on the market?

Ans. No; but I cannot answer your question truthfully without naming the extent.

X Q. 51. Have you yet stated the number of yards per annum that complainant has placed the "Shawmut L L" on the market?

Ans. No.

X Q. 52. Have you looked up the question as to the number of

yards of "Shawmut L L" complainant has placed upon the market annually since your connection with it in a business way?

Ans. No; but I look up the percentage of yards so stamped weekly and monthly and semi-annually with great care.

(Defendants move to strike out all of answer, except the word No, as being volunteered by the witness.)

X Q. 53. How are these what you call off-grade goods known in the market or trade—by what name?

Ans. I am unable to answer as to the market. I know nothing of the market or trade beyond our selling agents as to this mark of goods.

11 X Q. 54. How is it known and designated by your selling agents?

Ans. Invoiced to them as "Shawmut L L" cloth.

X Q. 55. How are the others invoiced?

Ans. As "Lawrence L L."

X Q. 56. They have always been so invoiced since you have been with the company, have they?

Ans. Yes.

X Q. 57. Who are your selling agents in the United States?

Ans. Messrs. Townsend and Yale, of New York; their principal store is in New York; they have branch houses in Boston and Chicago.

X Q. 58. How long have they been the selling agents of complainant?

Ans. From 1st of February, 1886.

X Q. 59. Please give me the names and business residences of the selling agents of complainant since you have been connected with it.

Ans. Messrs. Smith, Hogg and Gardner, of Boston; principal house being in Boston—branches in Chicago and New York. Messrs. George C. Richardson & Co.; their principal house being in Boston, with branches in New York, Philadelphia, and Chicago.

At one o'clock adjourned for half an hour.

Cross-examination resumed pursuant to adjournment.

X Q. 60. What other 4-yard goods besides the "Lawrence L L" have you used?

Ans. Lonsdale, Amory, Pound Sterling. I have used a great many that I couldn't give the letters for at the present time.

12 X Q. 61. Can you give the letters or manufacture of any besides the ones you have specified?

Ans. I have used one made by the Androscoggin Mills at Lewiston, one made by the Repperell Company, and one made by the Nashua Company.

X Q. 62. Can you specify any others than those you have in the answers to the last two questions asked?

Ans. I don't think of any now.

X Q. 63. Go on now and state in what years and in what quantities you used the manufactures named.

Ans. That is an impossibility.

X Q. 64. Can't you tell some of the amounts and years?

Ans. No; I cannot from memory; I have used the Naumkeag "C," the Androscoggin "L," and 4-yard goods by the Lonsdale Company, in my own household. I have used also of this "L L" sheeting very largely in the manufacture of shirts for the Lawrence Co.

X Q. 65. What years have you used the Lonsdale 4-yard sheeting in your household since 1878?

Ans. None.

X Q. 66. Have you used any 4-yard sheeting other than the Lawrence "L L" in your household since 1878?

Ans. Yes; I have used Androscoggin.

X Q. 67. To what extent?

Ans. For sheets and for shirts; a variety of purposes, as my household required.

X Q. 68. Now go on and state the size of your family and amount of use.

Ans. Family consists of four persons. Amount used has been what has been necessary from time to time.

13 X Q. 69. Have you used any sheeting since 1878 besides the Androscoggin 4-yard sheeting and the Lawrence in your household?

Ans. I cannot say that we have.

X Q. 70. How many grades of sheeting has complainant manufactured since you entered its service?

Ans. I cannot answer the question from memory.

X Q. 71. It has manufactured a great many different grades during this time, has it not?

Ans. No; not more than four or five, as near as I can remember; those of a variety of weights.

X Q. 72. The "Lawrence L L" varies somewhat as to the number of pounds per yard, does it not?

Ans. Not more than 5-100ths of a yard above or below its standard.

X Q. 73. Then it does vary, and is not of the uniform weight of 4 yards to the pound?

Ans. It does vary to the extent named.

X Q. 74. Did not the manufacture of the Lawrence "L L's" during the six months ending October 31st, 1885, vary over 20,000 pounds from the standard you have given of 4 yards to the pound?

Ans. I couldn't answer the question without examining the books.

X Q. 75. Give me the aggregate number of yards manufactured by the complainant during the six months ending October 31, 1885, of Lawrence "L L," and the aggregate number of pounds those yards weighed during the same time.

Ans. 13,751,136 yards, weighing 3,443,135 pounds.

14 X Q. 76. How many grades of sheeting was complainant manufacturing on the 31st day of October, 1885?

Ans. Three.

X Q. 76½. Does that include the Shawmut "L L?"

Ans. It does. The Shawmut "L L" and the Lawrence "L L" being one and the same class of goods, I counted them as one. We were making two others.

X Q. 77. Please specify the other grades.

Ans. "X X," weighing 3 20-100ths yards to the pound, and "X X X," weighing 2 85-100ths, and 40 inches wide. The "X X" are 36 inches wide.

X Q. 78. How long have you been making the Lawrence "X X" of the weight of 3 20-100ths?

Ans. I cannot state definitely, but I think 7 years, as near as I can remember.

X Q. 79. What do you have stamped on that grade of goods besides the "X X?"

Ans. Stamped "Lawrence Co. X X Improved."

X Q. 80. Any other mark or design besides "Lawrence Co. X X?"

Ans. I think there is a little vine or ornamental vine in the center between the letters.

X Q. 81. Is the stamp "Lawrence Co." or "Lawrence Mills?"

Ans. I have not looked at the stamp recently with a view of charging my mind what it was, and am unable to recall all the particulars of the stamp.

X Q. 82. That grade of goods is invoiced to your sale agents as "Lawrence X X," is it not?

Ans. The 36-inch width is.

15 X Q. 83. How is the "X X X" invoiced?

Ans. As "Lawrence X X X."

X Q. 84. Have you manufactured, during the last 8 years, goods that are 5 yards to the pound?

Ans. I do not think we have.

X Q. 85. Have you manufactured any of 3 yards to the pound within the same time?

Ans. Not of sheetings.

X Q. 86. How many threads to the inch do you use in "Lawrence X X" each way?

Ans. 64 slaie, in the warp, and 60 of picks or fillings; 64 by 60 as ordinarily called.

X Q. 87. How many threads to the inch each way do you use in the "Shawmut L L?"

Ans. 56 in the warp and 60 in the filling.

X Q. 88. How many threads each way in the "Lawrence L L?"

Ans. 56 in the warp and 60 in the filling.

X Q. 89. Ain't it 60 in the warp and 60 in the filling?

Ans. No.

X Q. 90. How many threads do you use each way in the "Lawrence X X X?"

Ans. 64 in the warp and 60 in the filling.

X Q. 91. In the trade is not the "Lawrence L L" understood to be 60 in the warp and 60 in the filling?

Ans. I cannot tell you how it is understood in the trade; our selling agents know that it is not so.

16 X Q. 92. Don't you know that your selling agents advertise the "Lawrence L L" as 60 threads in the warp and 60 in the filling?

Ans. No; I do not.

X Q. 93. Do you know how they do advertise it in those points?

Ans. I do not know that they advertise it at all on those points.

X Q. 94. Do you know how the trade understand the "Lawrence L L" in those points?

Ans. I do not.

X Q. 95. Do you know how the trade understand the "Shawmut L L" in those points?

Ans. I do not.

X Q. 96. When did the complainant attempt to make the "Lawrence L L" goods different from the 4-yards to the pound?

Ans. Never to my knowledge attempted to make them diferent.

X Q. 97. When did complainant attempt to make the "Lawrence L L" grade of sheetings different from what they are regularly made?

Ans. In the spring of 1885.

X Q. 98. Is that the only time?

Ans. No; attempted it previously; I should be unable to name the date, but at sundry times during the year 1885.

X Q. 99. About how many times during the year 1885, covered by the word "sundry?"

Ans. Nearly every day for the first six months of the year.

17 X Q. 100. How many goods did you put on the market under this change of grade?

Ans. I am unable to answer the question.

X Q. 101. Did you manufacture the goods under this change of grade for six months before the public discovered it?

Ans. I cannot answer as to the public.

X Q. 102. What was the change of the grade made in the "Lawrence L L's?"

Ans. A difference in the method of spinning the filling.

X Q. 103. What effect did that have on the weight and grade of the goods?

Ans. It did not affect the weight, but it gave the goods a harsh and wiry appearance to the feel.

X Q. 104. Did it affect the number of threads either way?

Ans. No.

X Q. 105. Then you had the same number of threads in the warp and the filling, did you?

Ans. Yes.

X Q. 106. Was the quality of cotton used the same?

Ans. Precisely the same.

X Q. 107. Did you change your machinery any in the manufacture of this sheeting to make this change in the grade of the "Lawrence L L?"

Ans. No.

X Q. 108. Will you please state what you did do to make this change in the grade of the "Lawrence L L," mentioned by you in your direct examination?

Ans. Spun the filling on a spinning frame.

18 X Q. 109. How did this change affect the cost of manufacture?

Ans. It did not affect it materially; if at all, it increased the cost; that question was not under consideration at the time.

X Q. 110. In your direct examination do you remember how many changes in the grade of the "Lawrence L L" you stated you made in their manufacture?

Ans. I do.

X Q. 111. How many did you state?

Ans. None made, but one attempt made.

X Q. 112. Is that as you testified in the direct examination?

Ans. I think it is.

X Q. 113. Where are the Atlantic Mills located, if you know?

Ans. Lawrence, Massachusetts.

X Q. 114. Is that the company that you stated in your direct examination manufactured the "Agawam F?"

Ans. I did not state that the Atlantic Co. manufactured the "Agawam F."

X Q. 115. Well, does it?

Ans. I cannot answer the question.

X Q. 116. Do you know?

Ans. I do not.

X Q. 117. Did you know in 1865 and 1866 a sheeting known in the trade as "Atlantic L L?"

Ans. I have seen it in jobbing stores.

X Q. 118. Did it have "L L" stamped upon it?

Ans. I think it did.

19 X Q. 119. In what year did you first see a sheeting in the trade known as "Atlantic L L?"

Ans. I should be unable to answer the question.

X Q. 120. You saw such sheeting in the trade as early as 1862, did you not?

Ans. I cannot say that I did.

X Q. 121. You saw such sheeting so stamped in the trade before 1865, did you not?

Ans. I am unable to say; but I saw sheeting so marked at some time between 1863 and 1870, on sundry occasions when visiting jobbing stores in Boston and New York.

X Q. 122. You saw sheeting in the trade so marked or stamped before you ever saw the "Lawrence L L" or "Shawmut L L," did you not?

Ans. I cannot answer that question.

X Q. 123. When did you first see the "Lawrence L L" in the market?

Ans. I cannot answer the question.

X Q. 124. Did you see the "Lawrence L L" in the market before 1870?

Ans. I do not remember seeing it in the market; but think I saw it in the Lawrence Company's cloth-room in 1868, when visiting the mill.

X Q. 125. Had you not seen the "Atlantic L L" in the market before that date?

Ans. I think I had.

X Q. 126. What else did you see stamped in the sheeting besides "Atlantic L L?"

Ans. I do not know.

20 X Q. 127. Were you ever at the Atlantic Mills prior to 1868?

Ans. Yes.

X Q. 128. When were you at the Atlantic Mills prior to 1868?

Ans. I cannot name the date; several times when visiting mills at Lawrence.

X Q. 129. Were you there during the years of 1860, 1861, or 1862?

Ans. No.

X Q. 130. Were you there during the year 1863?

Ans. I do not know.

X Q. 131. Were you there at any time between the years 1862 and 1865?

Ans. I do not know; but I was there several times between the years 1863 and 1870, for special purposes, inquiring in relation to machinery.

X Q. 132. Were you at the Atlantic Mills at any time between 1863 and 1868?

Ans. Yes.

X Q. 133. Did you go into their cloth-rooms and see the sheetings they were manufacturing at that time?

Ans. I do not think I ever visited the Atlantic Mills cloth-room.

X Q. 134. In what jobbing houses in Boston and New York did you see the sheeting marked "Atlantic L L," prior to 1868?

Ans. I think I saw it in Jordan, Marsh & Co.'s store in Boston, and Stewart's in New York.

X Q. 135. Can you give the number of yards manufactured
21 each consecutive six months of the "Lawrence L L" sheeting by complainant—the first six months ending April 27, 1878, and the last ending April 25, 1885—with the number of pounds weight of the product of each six months' manufacture? If you have any memorandum you can refresh your memory by referring to it for the period referred to.

(A paper with figures on it was in the hands of Mr. Hopkins at the time he asked this question and was handed to the witness.)

Ans. I find by a memorandum of the product of "L L" cloth manufactured by the Lawrence Manufacturing Co. from February 15, 1867, to October 31, 1885, which I have verified from the company's accounts, that for the six months ending April 27, 1878, there was manufactured 5,099,996 yards, weighing 1,271,674 pounds; for the six months ending October 26, 1878, 4,917,616 yards, weight 1,229,894 pounds; for the six months ending April 26, 1879, 6,126,-298 yards, weight 1,534,187 pounds; for the six months ending October 25, 1879, 5,938,265 yards, weighing 1,489,670 pounds; for

six months ending May 1, 1880, 5,911,941 yards and 1,480,036 pounds; for six months ending October 30, 1880, 7,438,077 yards and 1,863,750 pounds; for six months ending April 30, 1881, 7,811,478 yards and 1,954,911 pounds; for six months ending October 29, 1881, 7,093,991 yards and 1,779,912 pounds; for six months ending April 29, 1882, 6,864,078 yards and 1,716,728 pounds; for six months ending October 28, 1882, 7,403,160 yards and 1,854,372 pounds; for six months ending April 28, 1883, 9,480,390 yards and 2,385,199 pounds; for six months ending October 27, 1883, 11,365,500 yards and 2,864,552 pounds; for six months ending April 26, 1884, 11,159,190 yards and 2,805,532 pounds; for six months ending October 25, 1884, 11,530,489 yards and 2,900,213 pounds; for six months ending April 25, 1885, 13,514,229 yards and 3,403,301 pounds.

22 Redirect examination by Mr. RAINEY:

R. D. Q. 136. In your answer to the last cross-question, in giving the number of yards and pounds of the "Lawrence L L" sheeting manufactured by the complainant between 1867 and 1885, you read from a paper, which you stated was a memorandum of the product of "L L" cloth manufactured by the Lawrence Manufacturing Co. from February 15, 1867, to October 31, 1885. Now, will you please state what the said memorandum was taken from and whether you have verified the same?

Ans. It was taken from the invoice book, or rather I should say from our monthly return book, in which we make up the product for each six months by putting the separate months together and entering them on a page by themselves; that has been done since 1878; prior to that from the accounts on file in the office, being the final make-up of our six months' product for each six months during the time named. I did verify the memorandum from these accounts.

R. D. Q. 137. State whether these accounts and books we have referred to are under your control.

Ans. They are.

R. D. Q. 138. I will ask you now to file said statement or memorandum as part of your deposition in answer to this question for the purpose of showing the number of yards of "L L" sheetings manufactured by the complainant from February 15, 1867, to October 31, 1885, inclusive, and please identify the same with your signature and this date.

Ans. I hereby produce the same to be filed as requested, and have identified it as requested.

Complainant's counsel here introduces said paper; asks the same to be endorsed as Exhibit John Kilburn, which is done.

R. D. Q. 139. In cross-question 117 you are asked as follows:
23 "Did you know in 1865 and 1866 a sheeting known in the trade as Atlantic L L?" to which you answered, "I have seen it in jobbing stores." Do you intend to be understood by that answer that in 1865 and in 1866, during those years, you saw in the jobbing stores sheeting stamped "Atlantic L L?

Ans. I cannot state that I positively saw it during those years,

but think that I saw it at some time between 1863 and 1870. If I may be allowed, I should say that I do not feel so thoroughly positive of the stamps—what they were—as of the line of the Atlantic goods, as I had no occasion to specially inspect this line of goods, they being a heavier line of goods than I was then making.

R. D. Q. 140. You cannot state now, at this late date, with any certainty, that you ever saw a piece of sheeting stamped "Atlantic L L" prior to 1868, can you?

Ans. Dates on which I think I saw it are not permanently fixed in my mind.

R. D. Q. 141. Whenever it was that you did see sheetings stamped "Atlantic L L," were they what you have been designating in your deposition as 4-yard goods, or sheetings, of which four yards would weigh a pound?

Ans. My remembrance of them is that they were not.

R. D. Q. 142. In your cross-examination, in speaking of the Shawmut "L L," you have stated in substance that they were the regular L L goods manufactured by the complainant with "slight imperfections." Please explain what you mean by slight imperfections.

Ans. I mean that in some pieces threads would break and be left out for spaces of nine inches in some cases; several of these broken threads, which we consider imperfections, running for more than nine inches, would induce us to put the piece into a pile to be stamped "Shawmut" instead of Lawrence; or if a piece of
24 cloth had two or three small oil spots on it we should put it with the "Shawmuts;" or if a piece of cloth was badly soiled with dirt in process of manufacture by mechanics or otherwise we should call it off-standard, and consequently stamp it "Shawmut." Any pieces that were so badly made or soiled as to make them unmerchantable would be put up separately, to be disposed of "As are," without stamp—any unmerchantable goods. There would, however, be but very few pieces of the latter description.

Recross-examination by Mr. HOPKINS:

Re-X Q. 143. You have no personal knowledge of the accuracy with which complainant's books were kept prior to your entering its service, have you?

Ans. No.

Re-X Q. 144. You don't know who kept the books, of your own knowledge, prior to your entering the service of complainant, do you?

Ans. No.

Re-X Q. 145. Will you swear that you didn't see sheeting in the market stamped and known in the trade as "Atlantic L L," as early as 1863?

Ans. Yes.

Re-X Q. 146. Same question as to 1864.

Ans. No.

Re-X Q. 147. Didn't you, according to your best recollection and belief, see sheeting in the market as early as 1864 stamped or marked "Atlantic L L?"

Ans. I cannot fix definitely the date when I saw goods of this mark in the market. In 1863 I moved to Salem; during my first year there I had little or no occasion to visit the market; after that I was quite frequently in Boston and New York and
25 often visited the jobbing stores to inspect such lines of goods as came in competition with those I was then making, and I have continued this custum ever since. It was during my early years at Salem that I think I first saw the line of Atlantic goods, and I think among them I have seen "L L's."

Re-X Q. 148. According to your best recollection and belief, did you not see in the market a grade of sheeting stamped "Atlantic L L" prior to 1867?

Ans. I cannot state what I saw in the market any more definitely than I have already done.

R. X Q. 149. How many years were you at Salem?

Ans. Nominally 15 years; lacked 15 days of it. That was the term of my agency at those mills.

R. X Q. 150. Is it not your recollection and belief that you saw in the market a grade of sheeting marked or stamped "Atlantic L L" before complainant put upon the market what is known as "Lawrence L L?"

Ans. I cannot swear positively that I did.

R. X Q. 151. Isn't it your recollection and belief that you did; I don't ask you to swear positively?

Ans. I do not know of my own knowledge when the complainant first put "L L" goods in the market.

R. X Q. 152. Is it not your recollection and belief that you saw in the market a grade of sheeting marked or stamped "Atlantic L L" before you saw in the market a grade of sheeting stamped "Lawrence L L?"

Ans. I have no distinct remembrance of the dates when I first saw the "Lawrence L L" or the "Atlantic L L" goods.

R. X Q. 153. What is your best recollection as to priority?

Ans. I am unable to state which I first saw, because I cannot definitely fix the dates, but my first visit to the Lawrence
26 Mills was to visit the works for the benefit of my brother, who had been invited to take the agency of the mills indirectly, and that was, as near as I can remember, in the early part of 1867. It is the only thing I have to fix the date by.

JOHN KILBURN.

27 *Memorandum of "L L" Cloth Manufactured by Lawrence Manufacturing Co. from February 15, 1867, to October 31, 1885, inclusive.*

Six months ending—	Yards.	Pounds.	Looms run daily.
April 25, 1867	198,274	50,305	
October 26, 1867	597,768	150,554	
April 25, 1868	459,951	116,719	
October 31, 1868	678,123	171,342	
April 27, 1869	945,723	238,594	
October 29, 1869	1,994,232	501,768	
April 30, 1870	2,138,638	532,759	
October 29, 1870	2,819,202	707,016	
April 29, 1871	2,413,024	603,840	
October 28, 1871	2,777,268	693,643	
April 27, 1872	3,965,362	995,686	
October 26, 1872	4,600,032	1,149,953	
April 26, 1873	4,304,935	1,077,360	
October 25, 1873	3,743,599	1,186,509	
April 25, 1874	5,426,249	1,362,084	
October 31, 1874	6,749,051	1,701,505	
May 1, 1875	5,414,349	1,357,056	
October 30, 1875	5,571,860	1,399,282	
August 29, 1876	6,736,546	1,687,415	
October 28, 1876	5,795,201	1,448,864	
April 28, 1877	5,696,133	1,426,135	
October 27, 1877	4,688,330	1,167,391	
April 27, 1878	5,099,906	1,271,674	
October 26, 1878	4,917,616	1,229,894	989
April 26, 1879	6,126,298	1,534,187	1279
October 25, 1879	5,938,265	1,489,670	1136
May 1, 1880	5,911,941	1,480,036	1107
October 30, 1880	7,488,077	1,863,750	1448
April 30, 1881	7,811,478	1,954,911	1501
October 29, 1881	7,093,991	1,779,912	1363
April 29, 1882	6,864,078	1,716,728	1332
October 28, 1882	7,403,160	1,854,372	1509
April 28, 1883	9,480,390	2,385,199	1967
October 27, 1883	11,365,500	2,864,552	2221
April 26, 1884	11,159,190	2,805,532	2210
October 25, 1884	11,530,489	2,900,213	2338
April 25, 1885	13,514,229	3,403,301	2593
October 31, 1885	13,751,136	3,443,135	2644
	214,119,594	53,702,846	

28 United States Circuit Court for the Respective Districts Named in the Caption hereof.

LAWRENCE M'F'G CO.

vs.

AURORA COTTON MILLS and Other Defendants Named in the Caption hereof.

I, Charles F. Wolcott, a notary public within and for the county of Suffolk and Commonwealth of Massachusetts, duly commissioned and sworn, do hereby certify as follows, viz:

That on the 18th day of May, A. D. 1886, at my office, No. 10 Tremont street, in Boston, in said county, personally appeared said John Kilburn, a witness on behalf of the complainant in the above-entitled causes; that he was then by me first duly cautioned and sworn to testify the whole truth as a witness in said causes; that he was then by me carefully examined and gave the foregoing deposition in answer to interrogatories and cross-interrogatories proposed, as hereinbefore set forth, by the counsel before named for the respective parties in said causes; that the testimony so given by the said witness was by me reduced to writing in the presence of the deponent, and afterward read over by me to said deponent, and said deponent then subscribed the same in my presence as and for his deposition.

That said deposition was taken at the request of the complainant in said causes, and is to be used in evidence therein in accordance with the stipulation and agreement of the parties as hereinbefore set forth. I also certify that a certain exhibit, produced and testified to by said witness, has been verified by my signature, and is herewith annexed.

29 I further certify that I am not of counsel or attorney for either of the parties in said cause nor in any manner interested in the result thereof.

In testimony whereof I have hereunto set my hand and notarial seal, at said Boston, this 19th day of May, A. D. 1886.

[SEAL.] CHARLES F. WALCOTT,
Notary Public.

Fees paid by complainants.

Magistrate, for taking —, $25.

Witness:
Travel, Lowell, Mass., to Boston, Mass., and return, 60 miles.
Attendance, one day.

CHARLES F. WALCOTT,
Notary Public.

30 The deposition of EDWARD B. WILSON, taken on behalf of the complainant at Boston, Mass., May 19, 1886, before William A. Hays, 2d notary public, subject to the same stipulations and agreements as the testimony in this cause taken before Charles F. Walcott, Esq., notary public.

Direct interrogatories by Mr. RAINEY and answers of the witness thereto:

Q. 154. What is your name, age, residence, and occupation?

Ans. Edward B. Wilson; 46; West Newton, Mass.; merchant, member of the firm of Morse, Wilson & Co., of Boston, Mass., importers and jobbers of dry goods.

Q. 155. State how long you have been engaged in the dry-goods business, and if at any other place than Boston state where.

Ans. Twenty-six years in Boston; at no other place.

Q. 156. Who buys the domestic cottons for Morse, Wilson & Co.?

Ans. I do, and have done so for seven years.

Q. 157. Have you been familiar during these seven years with sheetings known as "L L" sheetings?

Ans. I have.

Q. 158. What is the significance to you and to the trade here attached to the symbol or trade-mark "L L" when the same is upon sheetings?

Ans. I don't know that I could answer that question direct; I would have to give you the weight of the cottons; I know but two weights of cottons here that "L L" is used on; a Lawrence "L L," which I should know as 4-yard goods, and an Atlantic "L L," 5-yard goods; I suppose they are 5-yard goods from hearsay; I have never weighed them.

31 Q. 159. You have mentioned Lawrence "L L" goods. How much do they weigh?

Ans. Four yards to the pound.

Q. 160. Is it a different and distinctive sheeting from the Atlantic "L L?"

Ans. They are.

Q. 161. Would you call it a different class of goods?

Ans. I should.

Q. 162. What significance, then, to your mind as a dealer in sheeting, has the symbol "L L" on sheetings—what does it indicate to you and to the trade?

Ans. Well, in my business I should know them as Lawrence "L L's," as I keep no other.

Q. 163. What would you understand to mean should a customer inquire of you the price of "L L" sheetings?

Ans. Well, I should infer from my own stock Lawrence "L L's."

Q. 164. Does it mean four yards' weight to the pound, five yards' weight to the pound, or some other weight to the pound?

Ans. It means four yards from our stock.

Q. 165. Outside of your stock what does "L L" sheetings mean in the trade, if it has any meaning here at Boston?

Ans. If any one should ask me for a quotation on "L L" cotton I should quote him "Lawrence L L" cotton, as I have no other. I only keep that stamp.

Q. 166. Do you know what "L L" cotton means in the trade in Boston outside of your own stock? If so, please state what it means.

Ans. No, sir; I don't know that I should, outside of my own stock.

32 Q. 167. Do you know any other 4-yard goods in this market besides the "L L?"

Ans. I do; just like a Lawrence "L L." There is but one cotton that I know of, as like it as can be. It is known as the Atlantic "P."

Cross-interrogatories by counsel for all the defendants and answers of the witness thereto:

X Q. 168. How are the Lawrence "L L" invoiced to you?

Ans. Well, I think they are invoiced "L" and a diamond "L L" outside; I am not perfectly sure.

X Q. 169. The word "Lawrence" accompanies the invoice, does it not?

Ans. Well, I don't think it is written out in full in the invoice. I can explain: We have a private stamp for the goods. We use them under a regular brand, and also under a private stamp. The private stamp would consist mostly of seconds, the regular stamp of which would be Shawmut L L, as the seconds are called. I prefer not to give my private stamp. My private stamp on the bale would be G inside of a circle, A A outside. That is what I use on the seconds—thus: G a a. This is put on by the mill. The firsts, or Lawrence "L L's," are stamped in full Lawrence L L's. They never have them any other way.

X Q. 170. In dealing with your customers you have two grades of sheeting, then, or kinds, one known in the trade as Lawrence L L's and the other as Shawmut L L's, do you not?

Ans. I do not; I only have the Lawrence L L's known to the trade.

X Q. 171. How do you dispose of your "Shawmut L L?"

Ans. I don't keep them under that stamp. I keep them under a stamp, as explained before, not known to the trade.

33 X Q. 172. There is a grade of sheetings, is there not, manufactured by the complainant, The Lawrence Manufacturing Co., and known to the trade generally as "Shawmut L L?"

Ans. Well, I should say it would be known to parties who use the goods. Very few parties in these parts use them.

X Q. 173. You have seen sheetings so stamped in the trade?

Ans. Yes, sir.

X Q. 174. Complainant is the manufacturer of "Shawmut L L" sheetings, is it not?

Ans. Well, I suppose them to use "Shawmut L L" on their seconds; I don't know to what extent; I haven't seen them for years. Of late years the people using seconds generally use them under private stamp.

By Mr. HOPKINS: In your market here?

—. Yes, sir.

X Q. 175. You don't know how it is in the trade in other markets?

Ans. No, sir.

X Q. 176. Is the "Shawmut L L" a lighter or a heavier grade of sheeting than the "Lawrence L L?"

Ans. It is supposed to be the same weight—seconds.

X Q. 177. Do you remember when the complainant changed the character of the "Lawrence L L" sheeting?

Ans. I do not.

X Q. 178. Has there been any change in the appearance of the "Lawrence L L" sheeting in the last five years?

Ans. Not to my knowledge; it is sometimes that cotton runs different different seasons, freer from specks.

X Q. 179. In your direct examination you mentioned a cotton sheeting known in the trade as "Atlantic L L." Who is
34 the manufacturer of that sheeting, and how long has it been manufactured?

Ans. The Atlantic Mills are the manufacturers. I cannot state how long it has been made.

X Q. 180. You have known of such goods so stamped "Atlantic L L," and so known in the trade since 1862 or '63, have you not?

Ans. I couldn't give a definite date on those; I couldn't go back a year.

X Q. 181. Is it not a fact that dealers in Boston have grades of sheeting known in the market as "Lawrence L L," "Shawmut L L," and "Atlantic L L," and "Albany L L?"

Ans. That I couldn't state any farther than my own stock is concerned.

X Q. 182. Your testimony, then, you wish to be limited to your own stock?

Ans. Except in a general way. Cotton has so very limited sale in New England—it is largely West—that we very seldom have a "Lawrence L L" asked for by New England customers.

Redirect examination by Mr. RAINEY and answers of witness:

R. D. Q. 183. In your cross-examination you have been asked about the "Shawmut L L." So far as you know, are not these goods of the same weight, same texture, as other "L L" goods made by the Lawrence Manufacturing Company?

Ans. I should say they were, except their being seconds, unselected goods, weight and count, texture, as the question was put, being the same.

R. D. Q. 184. You use the word "seconds." What do you mean by that, if the weight and count of these goods are the same as those of other "L L's" made by the complainant?

35 Ans. I mean imperfect goods.

R. D. Q. 185. But 4-yard goods?

Ans. Yes, sir.

R. D. Q. 186. What is the significance of "Shawmut?"

Ans. I suppose it to be seconds—known as seconds; that is all the significance I can give to seconds on that particular brand of cotton. We have other goods stamped "Shawmut," which we use on jeans, corset jeans, you might say, but not on cottons.

Recross-interrogatories by the counsel for defendants:

R. X Q. 187. If I understand you correctly in speaking of complainant's goods of 4 yards to the pound, you know the first grade or quality of that class of goods by the stamp or mark "Lawrence L L," and the second grade or quality of the same goods by the stamp or mark "Shawmut L L."

Ans. I know the first to be stamped "Lawrence L L," and suppose the seconds to be stamped "Shawmut L L."

R. X Q. 188. From those stamps, then, you would know the grade or quality of the goods?

Ans. Yes, sir.

Direct examination continued:

R. D. Q. 189. And in both instances the significance of "L L" when stamped on these goods indicates that they were made by the Lawrence Manufacturing Co. Is that correct?

Ans. When stamped on "Lawrence L L's" or "Shawmut L L's" I should say yes.

EDWARD B. WILSON.

Subscribed and sworn to before—

WILLIAM A. HAYES, 2D,
Notary Public.

36 *The Deposition of Charles W. Thomas.*

Q. 190. What is your name, age, residence, and occupation?

Ans. Charles W. Thomas; 49; dry-goods merchant, member of the firm of Bradford, Thomas & Co., importers and jobbers of dry goods, Boston; residence, Boston.

Q. 191. How long have you been connected with the firm of Bradford, Thomas & Co., and what are your duties as a member of said firm?

Ans. I have been connected with the firm of Bradford, Thomas & Co. and its predecessor as a partner for some twenty years. I am a buyer of domestic and flannel goods—the buyer for the firm.

Q. 192. Have you been familiar for this period of time—twenty years—with the different classes and grades of cotton goods?

Ans. Yes.

Q. 193. Have you been familiar, among others, with cotton sheetings known as "L L" sheetings?

Ans. I have.

Q. 194. What significance has the symbol or trade-mark "L L" to you when stamped on sheetings?

Ans. Well, it means to me 4-yard goods made by the Lawrence Manufacturing Co.

Q. 195. What reputation has these "L L" goods in the trade as to excellence?

Ans. I should say an excellent reputation.

Q. 196. State whether you have ever purchased these "L L" sheetings for your firm; and, if so, can you give an approximate estimate of the number of bales?

37 Ans. I have. About the quantity I couldn't say; I should say many hundred bales.

Q. 197. About the time that the Lawrence Manufacturing Co. first began to stamp its 4-yard goods with "L L"—that is, about February, 1867—did you know of any other 4-yard goods in the market if so, how were the same branded or stamped?

Ans. I have in my mind two brands; one the Agawam "F," and the other the Atlantic "P."

Cross-interrogatories by counsel for the defendants and answers of witnesses thereto:

X Q. 198. Has your firm during the period covered by your direct examination handled 4-yard sheetings other than the sheetings manufactured by the complainant?

Ans. It has, very largely.

X Q. 199. What mills?

Ans. They have handled our own brand marked "Abbott B," made for us by the Hill Manufacturing Company, of Lewiston, Me. None other to any great extent. This brand has not been manufactured for the last two or three years.

X Q. 200. During the last two or three years have you dealt exclusively with complainant on that grade of goods?

Ans. I have not.

X Q. 201. Have you dealt with any other manufacturing company in 4-yard sheetings? And, if so, state the name or names of the companies.

Ans. I can't tell you who they are made by. One is the "Enterprise E E," made in the South by the Enterprise Company. I can't tell where it's located.

X Q. 202. Do you know a 4-yard sheeting known in the trade as "Shawmut L L?" And, if so, state who manufactures such goods.

38 Ans. I do. They are made by the Lawrence Manufacturing Company.

X Q. 203. That company manufactures two grades of 4-yard sheetings, does it not? And, if so, state how each grade is stamped or marked.

Ans. I am not aware they do.

X Q. 204. Isn't there a 4-yard sheeting manufactured by complainant and known in the trade as "Lawrence L L?"

Ans. There is.

X Q. 205. Do you in your trade handle the "Shawmut L L?"

Ans. We do, to a limited quantity.

X Q. 206. From whom do you buy sheetings marked or stamped "Shawmut L L?"

Ans. We buy them of Townsend & Yale, the selling agents of the Lawrence Manufacturing Company, in Boston. Previous to that we purchased from Smith, Hogg & Gardner, who were the predecessors of the first-named firm as agents for the complainant.

X Q. 207. Do you get your "Lawrence L L's" from the same parties?

Ans. I do.

X Q. 208. In giving your order, if you want the "Shawmut L L" or the "Lawrence L L" goods, how do you indicate that to the said selling agents of the complainant?

Ans. When I want firsts I order "Lawrence L L's," and seconds, "Shawmut L L's."

X Q. 209. Do your customers order the same way from you?

Ans. Ordinarily I should say yes.

39 X Q. 210. Is there a difference in the price of the two goods?

Ans. Sometimes there is; sometimes they are both the same price.

X Q. 211. When one sells for a higher price than the other, which sells for the first price and which for the second or lower?

Ans. The Lawrence "L L" for the first price and the "Shawmut L L" for the lower price.

X Q. 212. Generally speaking, is not the "Shawmut L L" sheeting regarded in the trade as inferior in quality to the "Lawrence L L" sheeting?

Ans. Well, I should say, only so far as imperfections are concerned, which makes it second.

X Q. 213. Then, as a matter of fact, they are regarded in the trade as inferior goods to the "Lawrence L L?"

Ans. Yes, sir; I should say so, as far as imperfections make them.

X Q. 214. The letters "L L" in connection with the word Lawrence indicate one grade or quality of goods manufactured by complainant, do they not?

Ans. I should say they did.

X Q. 215. You know, I suppose, as a matter of fact, that the letters "L L" are used by other cotton mills, and have been for many years, besides complainant?

Ans. I do.

X Q. 216. Do you know the Atlantic Cotton Mills?

Ans. I do.

X Q. 217. Do you know of a grade of sheeting known in the trade as "Atlantic L L?"

40 Ans. I do.

X Q. 218. How long have you known the "Atlantic L L's" in the trade?

Ans. I can't say, but should say not as long as the "Lawrence L L's;" possibly five, perhaps as long as ten years; I do very little with the goods.

X Q. 219. Do you keep the "Atlantic L L" sheeting in your stock?

Ans. I do not.

X Q. 220. You would not state, would you, that the "Atlantic L L's" have not been in the trade since 1862?

Ans. I couldn't state one way or the other; I haven't any idea when they were first made.

X Q. 221. Do you use the first grade of complainant's manufacture of 4-yard goods under any other brand or symbol than "Lawrence L L"—that is, do you use a private brand or stamp?

Ans. We do sometimes; when the price is the same I should use the firsts; when the price varies we use the seconds, under our private brand, sometimes. Goods stamped with our private brand do not have stamped upon them either "Lawrence L L" or "Shawmut L L."

X Q. 222. Does complainant stamp 4-yard goods for you with your private brand?

Ans. Yes; at present Townsend and Yale have not; we have not called upon them to do so. In the past, Smith, Hogg and Gardner have done so for us.

Redirect interrogatories by Mr. RAINEY and answers of witness thereto:

R. D. Q. 223. What significance has the word "Shawmut" when stamped on "L L" sheetings?

41 Ans. Seconds, to me.

R. D. Q. 224. Are not such sheetings of the same weight, texture, or count as other "L L" sheetings made by the complainant?

Ans. Yes.

R. D. Q. 225. Then the only distinction between "L L" sheetings made by the complainant and stamped with "Shawmut" and other of its "L L" sheetings is that those stamped "Shawmut" have some defect in them made during the weaving; is that your understanding of it?

Ans. Yes, sir.

R. D. Q. 226. Does not, then, "L L," when stamped on 4-yard sheetings, although the same may be accompanied by the word "Shawmut," indicate to you that such sheetings were made by the Lawrence Manufacturing Company?

Ans. Certainly.

R. D. Q. 227. In your cross-examination the following cross-question 215 was put to you: "The letters 'L L,' in connection with the word Lawrence, indicate one grade or quality of goods manufactured by the complainant, do they not?" To which you answered, "I should say they did." Now, do you wish to be understood as meaning in this answer that "L L," in connection with the word "Lawrence," indicated any more than 4-yard sheetings, as manufactured by the Lawrence Manufacturing Company? I mean that the question referred to was formulated apparently on the idea and for the purpose of getting from you an answer to the effect that "L L," in connection with the word Lawrence, means a grade or quality of 4-yard goods of a superior or inferior quality to other 4-yard goods as made by the complainant. Now, do you wish to have such an interpretation placed upon your answer?

Ans. I do not.

42 Recross-examination:

R. X Q. 228. What do you understand by the question just asked you?

Ans. I understand by that question to know whether "Lawrence L L" means to me more than any 4-yard sheeting. It means to me a standard for 4-yard sheetings, 4-yard goods, and means more than simply 4-yard sheetings.

R. X Q. 229. Do you handle any goods, 4-yard goods, manufactured by complainant, stamped "L L," without the word "Lawrence" or "Shawmut" accompanying such letters?

Ans. No.

R. X Q. 130. Have you ever seen any 4-yard sheetings in the trade stamped or marked "L L" without any accompanying word or symbol accompanying them?

Ans. I can't say whether I have seen them or not; not to my remembrance.

R. X Q. 231. The letters "L L" in the trade must always be accompanied by some word or symbol to indicate the manufacturer?

Ans. I should say not.

R. X Q. 232. As a matter of fact, are not the letters "L L" on sheeting of four yards to the pound or otherwise always accompanied by some word, words, or symbol indicating the manufacturer of such goods?

Ans. Not necessarily.

R. X Q. 233. Question repeated.

Ans. That is all I can say to that.

R. X Q. 234. Question repeated.

Ans. Not necessarily is all I can answer to that.

CHARLES W. THOMAS.

43 The further taking of depositions is adjourned, by agreement of counsel, to the office of Hubert A. Banning, Esq., No. 21 Park Row, New York city, to be resumed, at eleven o'clock a. m., on the 20th day of May, 1886.

WILLIAM A. HAYES, 2D,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

I, William A. Hayes, 2d, a notary public within and for the county of Suffolk and Commonwealth aforesaid, do hereby certify that on the 19th day of May, A. D. 1886, at my office, at No. 58 Sears building, in Boston, in said county, at the hour of ten a. m., and by adjournment to the hour of two p. m., on said day, I was attended by the counsel in the above-entitled causes, both for the complainant and the respondent, and by Edward B. Wilson and Charles W. Thomas, witnesses for the complainant in said causes, both of whom were of sound mind and lawful age, and each of said witnesses, having been by me first carefully examined, cautioned, and sworn to testify the whole truth in the causes aforesaid, did answer to the interrogatories and cross-interrogatories put to them and gave the foregoing depositions.

That each of said depositions was reduced by me to writing in the presence of the said witness and afterwards signed by him as and for his deposition in my presence.

That said deposition was taken by agreement of counsel and subject to the stipulations heretofore made in these cases.

I further certify that I am not of counsel or attorney to either of the parties in the above-named causes in and for which said depositions were taken, nor in any way interested in the event of said causes.

44 In testimony whereof I have hereunto set my hand and seal this 19th day of May, A. D. 1886.

WILLIAM A. HAYES, 2D, [SEAL.]
Notary Public.

Fees—witness:

Travel and attendance, each $1.60	$3 20
Magistrate	20 00
	$23 20

Magistrate's fees paid by the complainant.

45 CITY AND COUNTY OF NEW YORK, *ss:*

NEW YORK, *May* 20, 1886.

Taking of testimony resumed, pursuant to adjournment, before Clinton S. Harris, a notary public, on behalf of complainant in the several suits of Lawrence M'f'g Co. *vs.* Aurora Cotton Mills, Evansville Cotton M'f'g Co., Tenn. M'f'g Co., and Beaver Dam Cotton Mills, pending in U. S. circuit court of northern district of Ills., district of Ind., middle district of Tenn., and eastern district of Wis., respectively, in presence of counsel representing the complainant and the several defendants.

WALTER M. SMITH, being first duly sworn:

Q. 235. State your name, age, residence, and occupation.

Ans. My name is Walter M. Smith; age, 49; I live at Stamford, Conn.; occupation, dry-goods commission merchant.

Q. 236. How long have you been in the dry-goods business?

Ans. 34 years.

Q. 237. Are you familiar with the different classes of sheetings manufactured and sold in the trade?

Ans. I am.

Q. 238. Do you know among such sheetings those stamped and branded L L?

Ans. I do.

Q. 239. To you and to the trade with which you are familiar, what significance is attached to sheetings when branded with L L?

Ans. They represent 4-yard sheetings manufactured by the Lawrence Manufacturing Company. In other words, Lawrence L L.

46 Q. 240. Is this its general significance and meaning in the dry-goods trade throughout the United States?

Ans. It is.

Q. 241. State if you know to what extent 4-yard sheetings thus branded are manufactured and sold by the complainant to other 4-yard goods in the market.

Ans. Their product is very largely in excess of that of any other mill in this country.

Q. 242. What have you to say as to the effect on the price of

double L L sheetings in the market, has the product of complainant?

Ans. The Lawrence L L establish the market price.

Q. 243. What would be the effect upon the Lawrence Manufacturing Co. should it discontinue to brand its 4-yard goods with L L as regards the market price of such goods and the quantity of its manufacture?

Ans. It would lose its command of the market and decrease its manufacture.

Cross-examination:

X Q. 244. Are you a member of the firm of Smith, Hogg & Gardner, commission merchants of New York city?

Ans. I am.

X Q. 245. Is that firm or has it been the agents or related in any business way with complainant; and, if so, how?

Ans. It has been selling agent for complainant, but is not at present.

X Q. 246. How long since has firm ceased to be selling agents of complainant?

Ans. Since the first of this year.

47 X Q. 247. Who are the selling agents of complainant in the city of New York?

Ans. Townsend & Yale.

X Q. 248. What line of 4-yard sheetings have you handled during the last ten years aside from the 4-yard sheetings from complainant?

Ans. Those of the manufacture of the "Tremont & Suffolk" mill and the Boott Cotton Mill.

X Q. 249. To what extent and for what length of time?

Ans. We have sold their entire product during our entire copartnership.

X Q. 250. Were these 4-yard sheetings that you handled and sold for these two corporations mentioned?

Ans. They were 4-yard sheetings.

X Q. 251. Were they the kind known as heavy brown or fine brown sheetings?

Ans. They were known by distinct brands; one was a fine brown.

X Q. 252. Did either of them come under the class of heavy brown sheetings?

Ans. Tremont C C was the nearest approach, and was and is a 35-inch cloth.

X Q. 253. Then, as a fact, neither of the mills mentioned manufactured sheetings, which were sold by you, that came in competition in the trade with heavy brown sheetings?

Ans. The Tremont C C has a standing by itself as a 35-inch sheeting. We have never classified it either as heavy or fine.

X Q. 254. Was the manufacture of either of those mills of the goods handled by you a competitor in the trade with the 4-yard goods you handled for complainant?

48 Ans. Never was.

X Q. 255. Then they were a different class of goods from the 4-yard sheetings manufactured by complainant and handled by you?

Ans. They were.

X Q. 256. Then you have never handled brown sheetings of the same general class of four yards to the pound, except for complainant, during the term mentioned?

Ans. No; except those previously referred to.

X Q. 257. Has complainant manufactured four-yard sheeting known in the trade as Shawmut L L?

Ans. It has.

X Q. 258. Have you handled that class of sheetings for complainant?

Ans. We have.

X Q. 259. Have you handled the Lawrence L L and the Shawmut L L for complainant at the same time?

Ans. We have.

(The numbers are not consecutive, owing to the error of the examiner.)

X Q. 266. They have been invoiced to you by complainant as "Shawmut L L" and "Lawrence L L," have they?

Ans. They have.

X Q. 267. And in your trade with your customers you have uniformly invoiced them as "Shawmut L L" and "Lawrence L L," have you?

Ans. We have invoiced them to the trade by the bale-mark only, viz: "L. M. C. L L" for Lawrence L L, S. L L for Shawmut L L, and in this form $\frac{L\ M\ C}{L\ L}$ and $\frac{S}{L\ L}$.

49 X Q. 268. Your customers who have been in the habit of handling both of these brands, when desiring to replenish their stock of each kind, respectively, would designate them in their order as above given, would they?

Ans. They would if they order the Shawmuts, but not necessarily in ordering the other.

X Q. 269. How long has complainant been manufacturing the "Shawmut L L" sheeting, and so branding it?

Ans. He has been branding the imperfect goods "Shawmut L L" ever since he has been making "Lawrence L L."

X Q. 270. While the sale agents of complainant, did not your firm sell to customers the company's grade of sheeting known in the trade as "Lawrence L L" without having that brand on the goods, but a private brand of the dealer thereon instead?

Ans. They did.

X Q. 271. Have you ever sold, while sale agent of complainant, sheetings of the complainant of the grade known in the trade as Lawrence "L L" without the letters L L being on the goods?

Ans. We have for converting purposes—that is, for printing or dyeing; but for no other purpose, to my knowledge.

X Q. 272. These goods when furnished to the dealer with the private mark have no "L L" upon them, have they?

Ans. To the best of my knowledge, they have not.

X Q. 273. Do you know the annual product of the 4-yard sheeting of the Aurora Cotton Company, or the Evansville Cotton Manufacturing Company, or the Tennessee Manufacturing Company, or the Beaver Dam Manufacturing Company?

Ans. I do not positively.

50 X Q. 274. Have you any knowledge except hearsay on that subject?

Ans. Nothing except hearsay and the published reports of the spindles and looms which they own.

X Q. 275. Do you mean reports published by them?

Ans. Presumably, the reports published in book form.

X Q. 276. Are the books published purported to be published by these companies?

Ans. It is a book, and is supposed to give a correct list of all the textile manufacturers in this country.

X Q. 277. As a matter of fact, Mr. Smith, you do not know the number of yards of this grade of sheeting manufactured annually by either of these companies, do you?

Ans. I do not of my own knowledge.

X Q. 278. What mill manufactures a 4-yard brown sheeting known in the trade as "Clarion L L?"

Ans. Could not tell.

X Q. 279. Do you know the annual amount of "Clarion L L's" manufactured?

Ans. I do not.

X Q. 280. What company manufactures a brown sheeting known in the trade as "Albany L L?"

Ans. Albany L L is, to the best of my knowledge, a private stamp used by J. V. Farwell & Co., Chicago, Ill. I don't know who the manufacturer is.

X Q. 281. What company manufactures a 4-yard grade of brown sheeting known in the trade as "Buckeye L L?"

Ans. I could not tell.

X Q. 282. You know there is such a grade of sheeting in the market and so marked?

51 Ans. I cannot place it.

X Q. 283. Do you know a 4-yard brown sheeting known in the trade as "Badger State L L?"

Ans. I do.

X Q. 284. By whom is it made, and what is the annual production?

Ans. It is made by the Janesville Company, of Janesville, Wisconsin. If they run full they sell the product in the neighborhood of six hundred looms.

X Q. 285. Do you know this grade of sheeting called in the trade "Victoria L L?"

Ans. Yes; I have seen it.

X Q. 286. What mill manufactures it?

Ans. I couldn't tell you the name of the mill.

X Q. 286½. Do you know these grades of sheeting shown in the market as "Pacolette L L" and "Forest City L L?"

Ans. I know the "Pacolette L L." I don't know the "Forest City L L."

X Q. 287. Where is the "Pacolette L L" manufactured?

Ans. It is manufactured in South Carolina.

X Q. 288. Do you know of a grade of sheeting known in the market as "Atlantic L L?" And, if so, state the number of years you have so known it.

Ans. I do know of a grade of 5-yards goods known as "Atlantic L L" and have known of them for a number of years; probably 15 to 18 years.

X Q. 289. Was there not a grade of sheeting manufactured by the Atlantic Mills and known in the market as "Atlantic
52 L L" as early as '64 or '65 and so known ever since, to the best of your recollection and belief?

Ans. I believe there was, but can't state positively.

Redirect examination:

R. D. Q. 290. You have been asked about "Atlantic L L." Will you please state whether it is of the same kind, quality, and grade of goods as the "Lawrence L L?"

Ans. It is not.

R. D. Q. 291. Would you say that it was an entirely different grade of goods?

Ans. I should.

R. D. Q. 292. Are the "Atlantic L L" a 4-yards goods; if not, how are they known?

Ans. They are known as a 5-yards fine brown.

R. D. Q. 293. Are they put in competition in the trade with four — goods of the "Lawrence L L?"

Ans. They are not.

R. D. Q. 294. As to the "Shawmut L L," are they not of the same quality, texture, and weight as other "L L" made by the complainant?

Ans. They are the same identical in the construction and weight, but thrown out on account of imperfection in the weaving.

R. D. Q. 295. What, then, does the word "Shawmut" signify?

Ans. When applied to the "Lawrence L L" it signifies that it is an imperfect piece.

R. D. Q 296. Does or does not the symbol "L L" when applied to sheetings manufactured by the complainant indicate 4-yards goods made by the complainant?

53 Ans. It does.

R. D. Q. 297. State whether you have seen in the trade the several brands of "L L" goods referred to in the cross-examination, or any other "L L" goods; and, if so, are they placed in competition in the market with "L L" sheetings made by the complainant?

Ans. All that I have identified by name, except the "Atlantic L L," have been and are in competition with "Lawrence L L." There

are any quantities — private brands "L L" sold by jobbers to the identity of the manufacturer of which I cannot place, and are competitors of "Lawrence L L."

R. D. Q. 298. What do you know about jobbers pushing such "L L" in preference to the "Lawrence L L?"

Ans. My experience has been that they have pushed these goods to the injury of the sale of the "Lawrence L L."

R. D. Q. 299. Do you know how this is done?

Ans. Keeping the "Lawrence L L" off the stand, furnish them only when they are obliged to, and substituting other "L L" marks therefor.

R. D. Q. 300. Do you know whether any "L L" known as "Beaver Dam L L," the "Aurora L L," "Hoosier State L L," or any other "L L" made by the Evansville Manufacturing Company or the "Cumberland L L" being so handled to the detriment of the "Lawrence L L?"

Ans. I know that every other "L L" in the market has been used against them, the "Lawrence L L," and the very condition which I have previously stated has been brought about in this manner.

54 Recross-examination:

R. X Q. 301. Name the jobbers who have practiced a fraud on their customers, referred to by you in your answers to questions 297 and 298 and 299.

Ans. I demur to your question as implying that I have suggested fraud on the part of these various jobbers in the manner in which they have handled these goods. They have used these other marks because the marks not being, perhaps, as well known as the "Lawrence L L," they had less competition in these particular marks, therefore kept the "Lawrence L L" out of the way, sold as few of them as possible, and as many of the others as they could.

R. X Q. 302. With this explanation give me the names and places of business of the jobbers referred to in your answers to questions 297, 298, and 299.

Ans. James H. Walker & Co., Chicago; S. C. Davis & Co., St. Louis.

R. X Q. 303. Mr. Smith, do you say that James H. Walker & Co., of Chicago, have substituted the "L L" goods of any of the parties to this suit for the "Lawrence L L" goods, when their customers have called for "Lawrence L L" or "Shawmut L L?"

Ans. I have not said so at all.

R. X Q. 304. Then please explain.

Ans. This is exactly the meaning I intended to say: In my answer to question 299 I wish to use the word "selling" in place of "substituting." In other words, the gentlemen above referred to have sold other "L L" marks largely, and thereby have largely decreased their purchases of "Lawrence L L" goods.

R. X Q. 305. Then you don't mean that either of the jobbing firms above mentioned have sold to their customers the "L
55 L" goods of other manufacturers than complainant, representing, either directly or impliedly, that they were the manufacture of complainant?

Ans. I do not.

R. X Q. 306. What you mean, then, is that these jobbing firms bought and sold the "L L" sheetings of other manufacturers than complainant?

Ans. I do.

R. X Q. 307. In answer to question 296, which is as follows: "Does or does not the symbol 'L L,' when applied to the sheetings manufactured by the complainant, indicate 4-yard goods made by complainant?" Your answer was, "It does." The same is true of other manufacturers, is it not, who manufacture 4-yard sheetings?

Ans. It is supposed to.

R. X Q. 308. Of the respective manufacturers named?

Ans. Yes.

R. X Q. 309. Sheeting in the market stamped "Aurora L L" is known in the trade as 4-yard sheeting manufactured by the Aurora Cotton Mill Company?

Ans. I couldn't tell whether it is or not.

Re-redirect:

R. R. Q. 310. Would you say that "L L" on sheetings stamped Aurora would indicate where or by whom the same was made?

Ans. Not necessarily.

R. R. Q. 311. Why not; does the word "Aurora" indicate to you where it is, or, in other words, do you know of any town or towns in the United States named Aurora; and, if so, how many?

56 Ans. There are some eighteen post offices in the United States by the name of Aurora. If I did not know that the Aurora Cotton Mill of Illinois made an "L L" sheeting I could not identify the sample shown as being made at any particular mill.

WALTER M. SMITH.

Subscribed and sworn to before me this 20th day of May, 1886.

CLINTON S. HARRIS,
Notary Public, Kings County.

Certif. filed in New York county.

The taking of further testimony is hereby adjourned by consent of all parties to Friday, May 21st, 1886, at ten o'clock a. m., before me, Clinton S. Harris, a notary public.

CLINTON S. HARRIS,
Notary Public, Kings County.

Certif. filed in New York county.

NEW YORK, *May* 20, 1886.

The parties appeared by consent and thereupon—

EDWARD E. EAMES, being duly sworn:

Q. 312. What is your name, age, and residence and occupation?

Ans. Edward E. Eames; 56 years of age; Brooklyn, Kings county; importer and jobber in dry goods; member of the firm of H. B. Claflin & Co., New York.

Q. 313. Please state whether the firm of H. B. Claflin & Co., during the past twenty years, has dealt in domestic cotton goods. And, if so, to what extent?

57 Ans. We have to considerable extent.

Q. 314. Among other cotton goods, has said firm bought and sold 4-yard sheetings made by the Lawrence Manufacturing Company and stamped L L; and, if so, to what extent?

Ans. We have, to considerable extent.

Q. 315. Has not your firm bought such goods in lots of (1,000) one thousand bales at a time?

Ans. Yes.

Q. 316. What significance or meaning has the symbol or combination of the letters L L when stamped on sheetings—what does it mean?

Ans. When used by the Lawrence Company it designates their 4-yard goods.

Q. 317. Does it not convey to your mind when stamped on 4-yard goods that the same were made by the Lawrence Manufacturing Company?

Ans. Not necessarily.

Q. 318. Has it ever had such meaning to you?

Ans. It might have, but not necessarily.

Cross-examination:

X Q. 319. The complainant manufactures, and has for some years, two kinds of 4-yard sheetings, one known in the trade as Lawrence L L and the other as Shawmut L L, has it not?

Ans. No; it manufactures one kind; the Shawmut are seconds, and known as the same thing.

X Q. 320. If a purchaser wanted to purchase the seconds, as you term them, he would designate the same as Shawmut L L, would he not?

58 Ans. Some would and some would not. Some would designate them as L L seconds; that is the trade way of speaking of them.

X Q. 321. Do your firm deal in any 4-yard brown sheetings other than the such sheetings manufactured by complainant?

Ans. Yes.

X Q. 322. Please state the names of such sheetings.

Ans. Atlantic P, Enterprise E E, and many others.

X Q. 323. Do you know a brown sheeting in the trade known as Atlantic L L?

Ans. Yes.

X Q. 324. For how many years have you known a brown sheeting known in the trade as Atlantic L L?

Ans. I should think about 10 or 12 years the Atlantic L L.

X Q. 325. Haven't the Atlantic L L been manufactured by the Atlantic Mills since 1862?

Ans. My impression—not, though I may be mistaken.

Redirect:

Q. 326. The Atlantic L L is known to the trade as a 5-yard goods, is it not?

Ans. I think five-ten.

EDWARD E. EAMES.

Subscribed and sworn to before me this 20th day of May, 1886.

CLINTON S. HARRIS,
Notary Public, Kings County.

Certif. filed in N. Y. Co.

59 LAWRENCE MANUFACTURING COMPANY
vs.
AURORA MANUFACTURING CO., BEAVER DAM COTTON MILLS, Tennessee Manufacturing Co., and Evansville Manufacturing Co.

In pursuance to adjournment the taking of testimony is resumed before Mr. Clinton S. Harris, notary public, this twenty-first day of May, 1886, beginning at ten o'clock a. m., in presence of counsel representing all the parties.

By stipulation the same shall be taken by A. W. French, as stenographer, in short-hand, to be by him transcribed upon the typewriter, the witness then signing the deposition and swearing to the same. The stipulation made in these cases at Boston shall also apply to this.

CHARLES S. SMITH, being duly sworn, testifies as follows:

Direct examination by Mr. RAINEY:

Q. 326. Please state your name, age, residence, and occupation.

Ans. Charles S. Smith; fifty-four years of age; New York city; selling agent for various corporations.

Q. 327. What is the name and style of your firm, and how long has it been in existence?

Ans. Smith, Hogg & Gardner; commenced under present style a year ago next July.

Q. 328. Under what name were you engaged in business before the formation of the firm of Smith, Hogg & Gardner?

Ans. Under the firm name of George C. Richardson, Smith & Co.

60 Q. 329. How long was that firm in existence, and who were its predecessors?

Ans. In existence two years; its predecessors were George C. Richardson & Co.

Q. 330. How long were you a member of the firm of George C. Richardson & Co.?

Ans. Since 1865.

Q. 331. Have you been a member of these several firms during this period of time?

Ans. All, with the exception of two years and a half.

Q. 332. Please state whether either of these firms have handled the goods of the complainant in these several causes of the Lawrence Manufacturing Co.; and, if so, for how long a period of time.

Ans. All of them have since 1865.

Q. 333. State whether or not, if you know, if you have handled and sold all the sheetings of this corporation.

Ans. We have sold them all.

Q. 334. Does the firm of Smith, Hogg & Gardner at present represent the Lawrence Manufacturing Co.; and, if not, since when has it ceased to be its agent?

Ans. It does not now represent the Lawrence Manufacturing Co.; it ceased to be their agent in February last.

Q. 335. During this period of time, since 1865, have you been familiar with the different grades and classes of sheetings that have been sold to the trade in the United States?

Ans. I have.

Q. 336. Among such sheetings do you know a brand which has been known and stamped with the symbol L L?

Ans. I do.

61 Q. 337. State what significance to you is conveyed by this symbol or trade-mark.

Ans. It signifies goods made by the Lawrence Manufacturing Co.

Q. 338. Of what width and weight?

Ans. Of four yards to the pound; thirty-six inches wide.

Q. 339. What significance has this brand to the trade?

Ans. The same significance it has to me; it means goods made by the Lawrence Manufacturing Co.

Q. 340. Does it or not indicate to you, and to the trade also, both the idea of 4-yard sheetings and the idea that it was made by the Lawrence Manufacturing Co.?

Ans. Certainly, it does.

Q. 341. Can you state when the Lawrence Manufacturing Co. first adopted this symbol of L L on its 4-yard goods?

Ans. Well, it was in 1867.

Q. 342. Please state, if you know, under what circumstances it adopted this trade-mark.

Ans. A little time previous to our adopting the L L we sold them under a single L, and we were induced to change because it was a time when cotton goods were depreciating. We had made considerable sales of the single L; but a party who had bought a large lot was underselling us at a price lower than we could afford to meet, and I suggested that in order to keep them out of this competition that the mills should change the fold of the single L from a narrow to a wide fold and to put on a double L.

Q. 343. Can you designate in what time in 1867 this was first done?

Ans. Yes, sir; it was done in January or February of that year. The goods came into the market under the L L mark
62 early in February, so that it must have been in January that we decided upon it.

Q. 344. Has the Lawrence Manufacturing Co. been using this L L from that time to this?

Ans. Continuously.

Q. 345. To what extent has it manufactured and put into market 4-yard goods under this trade-mark?

Ans. Well, probably to a larger extent than any brand of sheetings made in this country. Our production has at times been as high as five hundred bales a week—about.

Q. 346. How many yards to a bale?

Ans. About twelve hundred; possibly not quite so many; 450 to 500; I don't recollect exactly.

Q. 347. Bales?

Ans. Yes.

Q. 348. With what facility have you been able to dispose of these goods to the trade, or, in other words, what demand has there been for them?

Ans. The demand has been very large; they have probably been more largely distributed than any other brand of sheeting ever made. I have no doubt of it.

Q. 349. What do you know about the general popularity of these 4-yard goods, so branded by the Lawrence Manufacturing Co.?

Ans. They have generally been considered in the trade as the standard of that class of goods.

Q. 350. What effect have they had in the market in fixing the price of 4-yard sheetings?

Ans. They have for years past fixed the price of other goods—that is, other people have been governed in their prices by ours.

63 Q. 351. What about the uniformity in quality of such 4-yard goods made by the complainant?

Ans. That has been their distinguishing excellence.

Q. 352. Has it been so known and recognized by the trade?

Ans. Yes, sir; universally.

Q. 353. Can you give an instance wherein 4-yard goods so branded by the complainant with L L were made different from the regular standard; and, if so, with what result was the attempt met?

Ans. Yes, sir; we introduced at one time in a very limited way a different style of filling. We made very few bales of it. It was discovered immediately and the goods objected to. I called the attention of the mill to it as soon as I noticed it and it was abandoned.

Q. 354. Why was it abandoned?

Ans. Because the goods made with the particular class of filling to which I referred were not up to the standard, and we believed it would injure the reputation of the goods, which it undoubtedly would have done if continued. There were only a few bales made.

Q. 355. What about the weight and texture of these few bales?

Ans. They were precisely the same weight and the same count, but they were not so even and not so good-looking a piece of goods, and would not have been considered up to our uniform standard.

Q. 356. What do you know about the efforts made by the complainant to preserve this uniform standard?

Ans. It has had the constant care of the treasurer, manufacturer, and the selling agents. It has been considered imperative to have absolute uniformity in order to meet the requirements of the trade and keep up the popularity of the goods.

64

Q. 357. Is it not a fact that the trade is very jealous on such points?

Ans. Absolutely so. It is like the character in a man.

Q. 358. And up to the time that your firm ceased to be the selling agents of the complainant had it or not preserved its reputation in the trade by reason of the excellent quality of its goods?

Ans. I believe we had, absolutely.

Q. 359. Can you state of what value, if any, this trade-mark or symbol of L L is to the complainant?

Ans. Yes; it was of very great value. By means of this trade-mark these goods were always preferred to any competing goods.

Q. 360. At the time of its adoption by the complainant were there any other 4-yard sheetings manufactured and known to the trade; if so, can you state what they were and how they were branded?

Ans. There were two or three brands. I recollect Agawam F. I cannot recall the others. I know there were two or three.

Q. 361. Atlantic P; you recognize that as one?

Ans. I don't know whether that was made then or not; I don't recollect.

Q. 362. Do you or not recognize this as a brand on 4-yard sheetings at some time in the trade?

Ans. Atlantic P? Oh, yes.

Q. 363. Is it or not used now?

Ans. Yes, it is.

65

Q. 364. Since the adoption of this symbol have you been familiar with other 4-yard sheetings and other brands than those we have mentioned?

Ans. Yes, sir; generally so.

Q. 365. Is it not a fact that during this whole period of time the 4-yard goods so branded by the complainant has maintained and kept its distinctive features among other 4-yard goods and other brands?

Ans. Yes, sir; it is a fact.

Q. 366. (Handing witness piece of cloth.) Have you before you, and, if so, will you please exhibit and attach as part of your deposition, any samples of the stamp of 4-yard sheetings branded with L L and made by the Lawrence Manufacturing Co.?

Ans. Yes, sir; I have two; they were both made by the Lawrence Manufacturing Co.

Q. 367. Describe them.

Ans. One has a full figure of a bull, rampant, marked "Lawrence Mills sheetings," "L L" under the word "sheetings," and the yard mark, "51 yards." The other has the head of a bull only, but is marked the same in other respects as the one previously described.

Q. 368. Which was adopted first, the rampant bull or bull head, and how long were they used, respectively?

Ans. The rampant bull was adopted first, and used for a great

many years. I can't tell the exact date when the other was used; don't recollect that, but it is within a few years.

Complainant's counsel now offers in evidence these samples referred to by the witness as Exhibits 1 and 2, respectively. It is stipulated that these exhibits referred to in Mr. C. S. Smith's deposition shall be retained in the possession of complainant's counsel.

66 Q. 369. Was there any change made, in so far as affecting the popularity of these goods in the trade, by this alteration from the rampant bull to the bull's head?

Ans. None whatever.

Q. 370. Is it or not a fact that the symbol or trade-mark L L is the distinctive feature of the brand of these samples?

Ans. Yes; the double L is the distinctive and principal thing, and is so understood by the trade.

Q. 371. How are orders given to your firm for L L goods manufactured by the complainant?

Ans. They were always spoken of as L L. "Send us so many bales L L's." We very frequently used to send off a telegram in this way: "Price of L L so and so." We mentioned nothing else, and were always understood to mean goods of the Lawrence Manufacturing Co.

Q 372. Both you and your customers?

Ans. Both by us and our customers.

Q. 373. In the previous part of the testimony for the complainant, and on cross-examination, counsel for the defendants have questioned complainant's witnesses on the subject of branding a part of the output of the Lawrence Manufacturing Company L L sheetings with "Shawmut." Will you please explain the significance of this, and why such goods were so branded?

Ans. The Shawmut brand is what is known as applying universally to what are termed by the trade "seconds"—that is, if a piece of goods was a little light in weight or had weaver's imperfections it was branded "Shawmut," because that particular piece did not come up to the uniform standard adopted for the Lawrence L L. It is the uniform custom of all well-regulated mills to do that sort of thing.

67 Q. 374. How do these goods so branded compare as to weight and count with the other L L's of the Lawrence Manufacturing Co.?

Ans. The count would be the same; they might be a little lighter in weight, and for that reason we would stamp them Shawmuts.

Q. 375. Would the difference in weight be of any consequence?

Ans. Very slight.

Q. 376. But of enough to lessen the quality?

Ans. Enough to bring them below the standard established.

Q. 377. Now, can you state what percentage of the output of the Lawrence Manufacturing Company's L L's have been so branded "Shawmut?"

Ans. Perhaps 5 to 7½ per cent; it would depend on the class of cotton we were using somewhat and somewhat upon the state of the

weather; somewhat upon the character of the weavers. I should think the average would not be over 5 per cent.; it would run from 3 to 7½ per cent.

Q. 378. Then, if I understand you correctly, Shawmut is a word of limitation when attached to such L L goods?

Ans. Yes, sir; the trade understand it as the "second" brand of the goods made by the Lawrence Manufacturing Company.

Q. 379. When you receive an order for L L sheetings or quote prices on them has it any reference to Shawmut L L's?

Ans. No, sir; not unless they are specially called for. If a man asked us the price of L L's we should never think of giving him the Shawmut price unless he asked it.

Q. 380. You have stated previously in your direct examination that the Lawrence Manufacturing Co. or its agents fix the
68 price in the market of L L sheetings; what do you know of the manner in which such price affects other manufacturers of L L sheetings?

Ans. I know that other and competing manufacturers have been in the habit of making sales of their goods with a guaranty something like this: That if the agents of the Lawrence Manufacturing Co. up to a certain date reduced their price these competing goods should be reduced relatively; they always had to sell them less.

Q. 381. How much less?

Ans. From two and a half to five per cent. lately.

Q. 382. Do you know the names of such competitive manufacturers?

Ans. I know the names of a good many of them.

Q. 383. Please mention such as you can recall.

Ans. The defendants in this case, The Janesville Company, Michigan L L, The Evansville Manufacturing Company, The Pacolet Mill. There are two or there others whose names I can't recall; The Enterprise, I believe.

Q. 384. Do you recall the name of the Aurora Manufacturing Co.?

Ans. Yes, sir; I believe I mentioned it, did not I?

Q. 385. Tennessee Manufacturing Co.; do you recall that?

Ans. I don't think I ever knew that.

Q. 386. Did you ever hear of the Cumberland L L's?

Ans. Yes, sir.

Q. 387. You don't know by what company it is manufactured?

Ans. No; I do not.

69 Q. 388. Do you recall the Beaver Dam L L's as one of such competitive brands?

Ans. Yes, sir.

Q. 389. I will ask you to state again, if you please, the manner in which competing manufacturers meet the prices of the Lawrence L L's to the trade?

Ans. It has been frequently done by what is known as a guaranty against any price that the agents of the Lawrence Manufacturing Co. may make.

Q. 390. How is this done?

Ans. By saying, "We will sell you these goods at a certain price, and if the Lawrence Manufacturing Co. make a lower price within a given time we will meet that price and go a little better;" that is generally the way it is done.

Q. 391. What effect has this course had upon the market price of L L sheetings?

Ans. Greatly to reduce the profits of our manufacturing.

Q. 392. Is it or not a fact also that it has tended to lower the price of such L L sheetings?

Ans. Yes, sir; that is also true.

Q. 393. I now hand you some samples—one branded A C M (in monogram) underneath the word "Aurora;" then a representation of the rising sun, with the words "fine sheetings" underneath, and underneath that, in large letters, L L, which is asked to be attached as Exhibit No. 3. Another sample, branded "Crescent City Mills;" underneath the word "Mills," "L L," in large letters; underneath that the form of a crescent, and underneath that the word "sheetings." This I ask to attach as Exhibit No. 4. Another sample, branded "Cumberland Mills," with the figures 4-4; underneath the same, in large letters, L L; which is marked Exhibit No.
70 5. Another, branded "Beaver Dam;" underneath which is a meaningless scroll; underneath that the word "sheetings," and underneath the word "sheetings," in large letters, L L; which is marked Exhibit No. 6. Will you please examine these several exhibits and state whether there is anything on either of them that to you would indicate where the same were manufactured?

Ans. No, sir; I see nothing.

Q. 394. I would also ask you whether or not you see any similarity on these samples to the samples Nos. 1 and 2; and, if so, to state wherein such similarity consists?

A. They all have L L branded on them, the same as the Lawrence Manufacturing Co.'s samples; they all have the same letters, L L, as on the samples made by the Lawrence Manufacturing Company.

Q. 395. Assuming that these several exhibits, 3, 4, 5,a nd 6, represent four-yard sheetings manufactured by the defendants, Aurora Cotton Mill, Evansville Manufacturing Co., Tennessee Manufacturing Co., and Beaver Dam Cotton Mills, respectively, now, with your familiarity with the trade, what have you to say as to whether or not the branding of such four-yard goods with the symbol L L would have a tendency to deceive the trade?

Ans. I think it would have.

Q. 396. Are there other sheetings in the trade of a different weight and quality to the four-yard sheetings; and, if so, what are the weights of such classes, if you can recall them?

Ans. There are all the weights, from 2.85 to the pound up to 8 and 10 yards to the pound, made.

Q. 397. Do these several weights each represent a distinctive class of sheetings?

Ans. Yes, sir.

Q. 398. So known to the trade?

71 Ans. So known to the trade.

Q. 399. To which general class does L L indicate a sheetings to belong?

Ans. To four yards to the pound.

Q. 400. Is that so known and recognized by the trade?

Ans. Yes, sir; so known and recognized by the trade.

Q. 401. Do you know of a standard work, known to the trade, which purports to give information on the subject of manufacturing of textile fabrics; and, if so, will you please describe it?

Ans. (Examining book handed him by counsel). Yes, sir; this is the book; it is entitled "Textile Manufacturers' Directory of the United States," of the date 1883. It is published annually, and I always subscribe to it.

Q. 402. What edition is the one of 1883?

Ans. The 13th.

Q. 403. How is this directory received in the trade?

Ans. It is regarded as the best information that you can procure on the subject known to the public.

Q. 404. Up to what period of time has the competition in the trade on "L L" sheetings, above referred to, become noticeable to you?

Ans. We have felt it for seven or eight years, but particularly within three or four years it has grown to be considerable and somewhat formidable.

Q. 405. Can you mention the name of any particular manufacturing company that has been the most formidable competitor on these goods, and under which brand it was known?

Ans. I believe the Janesville Company, known as the "Badger State L L."

Direct examination closed.

72 Cross-examination:

X Q. 406. The "Badger State L L" is what kind of a sheeting?

Ans. Four-yard sheeting.

X Q 407. Manufactured by whom?

Ans. I don't know; made at Janesville, I always understood.

X Q. 408. By the Janesville Company?

Ans. Yes, sir.

X Q. 409. That goods have been in the market how many years?

Ans. I don't know exactly, but think seven or eight; possibly ten.

X Q. 410. Hasn't it about fifteen?

Ans. I couldn't answer that with any degree of certainty. Within five or six years they have increased their production, I judge. So much so that there has been a good deal of competition for us.

X Q. 411. Who were the New York selling agents of the "Badger State L L's?"

Ans. I don't know that they have any in New York; never heard of any.

X Q. 412. This competition you speak of is competition in your Western sales, then?

Ans. Yes, sir; mainly.

X Q. 413. Who are the selling agents of the respective defendants?

Ans. I don't know that their goods are sold in New York; that is, the defendants, the Aurora Mills, the Evansville, and
73 the Beaver Dam. I am not aware that they have any selling agent in New York.

X Q. 414. Can you state who the selling agents are or have been of any of the defendants in any parts of the United States?

Ans. No, sir; I understand that generally they have been sold by the mills; that they have had no selling agents in Chicago, although I am not quite sure in regard to that.

X Q. 415. Then you can't name any firm or individual who has acted as the selling agent in any part of the United States for any one of the defendants, as I understand you?

Ans. No, I cannot.

X Q. 416. Do you state that the Aurora Cotton Mill Company has ever guaranteed to any of its customers to lessen its price to meet the price of the complainant's 4-yard goods?

Ans. I can't state that as regards that mill particularly, but as to the general sale of the defendant's goods at Chicago.

X Q. 417. Will you state that that has been done by any one of the defendants?

Ans. I will.

X Q. 418. Which one?

Ans. The Janesville Mill, if it is a defendant.

X Q. 419. Can you name any of the other defendants that have done that?

Ans. Don't know that I can; I believe it to have been their general practice in the Chicago market.

X Q. 420. Do you know of any other cotton mill which manufactures a 4-yard sheeting which has guaranteed any such thing?

Ans. I am informed by Western buyers that that is generally the case.

74 X Q. 421. Name one of the defendants, aside from those you have already named, who has done that.

Ans. I cannot name one.

X Q 422. Are you able to swear, Mr. Smith, that any one of the defendants, aside from those you have named, has ever made such a guarantee to its customers?

Ans. No, I am not; my information is derived from buyers who tell me they do.

X Q. 423. What buyer has ever told you that one of the defendants in this suit has guaranteed its goods with reference to the complainant's goods?

Ans. J. V. Farwell & Co. and Field, Leiter & Co.

X Q. 424. What did J. V. Farwell & Co. tell you about one of these defendants?

Ans. I was told by a member of that firm that it could buy the Janesville goods protected against any price which the Lawrence Manufacturing Company might make.

Mr. Rainey here states to the witness that the Janesville Manufacturing Company is not one of the defendants herein.

Defendants' counsel protest against Mr. Rainey making any statement to the witness.

X Q. 425. Are you a stockholder in complainant's company?
Ans. Yes.
X Q. 426. To what extent?
Ans. Five shares.
X Q. 427. Are you one of the directors?
Ans. No, sir.
X Q. 428. Or managers?
Ans. No, sir.

75 X Q. 429. Is your brother, Walter Smith, a stockholder in the complainant's company?

Ans. No, sir; I think not; I am sure he is not.
X Q. 430. Can you state by looking at Exhibit No. 3 how many yards to the pound that goods is?
Ans. Yes, sir. I should judge that to be four-yard goods.
X Q. 431. How do you tell that?
Ans. By the general appearance and the feeling to the hand.
X Q. 432. By feeling?
Ans. And the general look of the goods.
X Q. 433. Before you answered the question you had to feel of the goods, did you not?
Ans. Yes.
X Q. 434. You would not trust your judgment, then, by looking to determine whether it was four, four and a half, or less than four yards to the pound goods?
Ans. You mean by simply looking?
X Q. 435. Yes, sir.
Ans. No, sir; I would not, simply by looking.
X Q. 436. You would make the same answer concerning these other exhibits, would you not?
Ans. No; I should have to look at them. (Witness examines Exhibit No. 6.) I should in regard to this "Beaver Dam." I should in regard to the "Crescent City." This sample (referring to the Cumberland) seems a little light, but I should think it was meant for the same weight.
X Q. 437. You determine that in your mind by feeling as well as by looking at the goods?
Ans. Yes, sir.

76 X Q. 438. If the goods were piled on a counter or table, in bulk, could you tell by the sight alone what grade of goods they were?

Ans. O, no; not absolutely.
X Q. 439. How would you determine that fact?
Ans. By putting my hand in and feeling the weight, aided by the sight.
X Q. 440. Of course?
Ans. Yes.
X Q. 441. You may indicate in your evidence what marks you see upon Exhibit No. 3, now shown you.

Ans. I see a monogram composed of the letters A. C. M. and the word Aurora; then the rising sun over the water; a ship in a circle; the words "fine sheetings; the letters L L, and a yard stamp, "50."

X Q. 442. Just look at the letters and indicate in your answer what style of letters you find there.

Ans. You mean generally? I find three distinct styles of letters, if not four.

X Q. 443. The letters L L; what kind are they?

Ans. I should call them some kind of fancy letters; don't know how to designate them other than that.

X Q. 444. They are outlined letters, are they not?

Ans. Yes, sir; and have an ornament between the lines.

X Q. 445. And are styled in the trade "outlined shaded" or "ornamented" letters?

Ans. I should call them fancy letters.

X Q. 446. Look at Exhibit No. 6, now shown you, and indicate in your answer the character of the letters L L; whether they are the outlined shaded or the ornamented letters.

77 Ans. They are shaded fancy letters.

X Q. 447. Look at the letters L L on the Crescent City Mills' sample. (Ex. No. 4.)

Ans. They are the same character of letters.

X Q. 448. Known as the outlined or ornamented letters?

Ans. Yes, sir.

X Q. 449. And look at the letters on the sample of the Cumberland Mills' sheetings (Ex. No. 5), and state what those are.

Ans. Outline shaded, but less ornamented.

X Q. 450. The outlined letter proper, but without the ornament?

Ans. Somewhat ornamented.

X Q. 451. But less elaborately than the others?

Ans. A block letter, little shaded and ornamented.

X Q. 452. Please look at the letters L L on the goods of complainant, and answer me if those letters are not what are known in the trade as "antique condensed," or "block" letters?

Ans. I don't know anything about antique condensed. They are known as block letters.

X Q. 453. They are solid printed letters, are they not?

Ans. Yes.

X Q. 454. The letters present a dissimilar appearance, do they not, on goods?

Ans. As respects the letters themselves; the shape of them.

X Q. 455. In looking at those letters, what is the size of the letters on the exhibits which are outlined?

78 Ans. Only a little larger and more prominent than ours.

X Q. 456. They are all larger, are they not?

Ans. Yes, sir.

X Q. 457. The outlined or ornamented L L presents an entirely dissimilar appearance from the block letter L L, does it not?

Ans. As respects the mere form of the letter, yes—upon a critical

examination such as I am now making; but my impression is the ordinary buyer would not observe it.

X Q. 458. It gives that impression to the eye?

Ans. Yes, sir; but I don't suppose one man in a hundred, in buying a piece of sheeting, observes the form of a designating letter; I never do.

Defendants' counsel excepts to the last part of above answer as not being responsive.

X Q. 459. In Exhibits Nos. 1 and 2 the words "Lawrence Mills" are found, used in connection with the L L, are they not?

Ans. Yes, sir.

X Q. 460. And the words "Lawrence Mills" have always accompanied those letters, have they not, on a certain grade of sheeting made by the complainant?

Ans. Yes, sir.

X Q. 461 On a four-yard sheeting?

Ans. Excepting on Shawmuts and private brands. They have always accompanied on the regular L L goods.

X Q. 462. Lawrence Mills is the name of the corporation, is it not?

Ans. Yes, sir. The corporate title is Lawrence Manufacturing Company; but in ordinary conversation they are spoken of as the Lawrence Mills.

79 X Q. 463. And I understood you, in your direct examination, to say that a bull rampant or a bull's head has always accompanied as a part of the symbol of the four-yard sheeting of the complainant?

Ans. Yes; of the standard Lawrence L L.

X Q. 464. Is there anything similar to that on the trade-marks of either of the defendants as just exhibited here to you?

Ans. No, sir.

X Q. 465. No person in looking at the trade-marks of the complainant and defendants could mistake one for the other, could they?

Ans. No, sir; when you say trade-mark you mean the bull?

X Q. 466. I mean the whole thing.

Ans. What we call a vignette?

X Q. 467. I mean that in looking at what is described as the bull rampant or the bull's head on the Lawrence Mills' L L sheeting, and then, for example, at the Beaver Dam sheeting L L, no person could ever mistake one for the other?

Ans. They could not upon a critical examination, such as we are making now; but I have to say that people when they look upon this sort of thing look for the L L, and they might be mistaken by the similarity to the L L.

X Q. 468. Do you state as a fact that the block letter L L has any resemblance to the ornamented or outlined L L?

Ans. I do, decidedly.

X Q. 469. You say that a block letter, then, resembles an ornamented letter and might be mistaken for it?

Ans. Yes; I do.

X Q. 470. I understood you to say, on your direct examination, that when complainant adopted the letters L L to designate four-yard goods they also changed the fold of the four-yard goods?

80

Ans. Yes.

X Q. 471. And the change of the fold was a part of the change that was made at the time of the adoption of the two L L's to indicate four-yard sheetings?

Ans. The change of the fold was made at the time we doubled the letter; at the same time.

X Q. 472. Why was the change of the fold made?

Ans. Simply as a matter of taste; that is all; there was no definite reason for it.

X Q. 473. But, as a matter of fact, you did make a change in the fold?

Ans. Yes; from narrow to wide.

X Q. 474. And that change in the fold would be perceptible to the buyer, would it not?

Ans. Yes.

X Q. 475. And would this change in the fold necessarily indicate four-yard goods?

Ans. Not necessarily, because we have sometimes put up four-yard goods, narrow fold, under private stamps. We occasionally put up Lawrence L L narrow to please some people, but not generally.

X Q. 476. You have also put up Lawrence four-yard sheeting without the L L at all, to please some people?

Ans. Yes, sir; we have sold them for printing and converting, and, under such circumstances, a mark is never put on by anybody and would be objectionable.

X Q. 477. If a customer of yours wanted a private mark put on four-yard goods you never hesitated to sell him four-yard goods manufactured by complainant without the letters L L put upon them?

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Ans. We have hesitated to do so, but, as a matter of fact, we have done it occasionally; sometimes we have refused to do it—when goods were sold ahead.

X Q. 478. You have always done that, of course, when you could accommodate your customers?

Ans. There have been times when we were so far sold ahead on the Lawrence L L mark that we have declined to do it. A very insignificant proportion of the production of this mill has been sold under private marks.

X Q. 479. But when your mill has been in a condition to supply your customers readily on four-yard goods you have not hesitated to furnish them without the mark Lawrence L L on them?

Ans. I don't think there has been twenty instances where we have done it in our trade in New York; have done it in very exceptional cases.

X Q. 480. Do I understand you to say that the competition in

four-yard goods in recent years has curtailed the production of the complainant's mills on that grade of sheeting?

Ans. The production had not been reduced up to the time that we surrendered the agency, but I understand it has been since. What I said was that this competition had very much reduced the profits of manufacturing to the Lawrence Mills.

X Q. 481. You know nothing about what the mill has done since you left, then?

Ans. Only what I was told.

X Q. 482. Simply hearsay?

Ans. Simply what I have been told by people who ought to know.

82 X Q. 483. You made an affidavit in this case, did you not, on a preliminary motion for an injunction in Chicago?

Ans. Yes.

X Q. 484. You are the gentleman Messrs. Raymond & Rainey consulted with in reference to bringing these suits?

Ans. They talked with me about it and with my brother; there are two Smiths in the firm, you know.

X Q. 485. You have talked with Mr. Rainey about your evidence in this case before going on the stand this morning?

Ans. I have given him all the good advice I could about it; have talked to him every time I have seen him about it.

X Q. 486. Has Mr. Rainey talked with you about L L sheetings of any other mills aside from the parties to these suits?

Ans. I don't recollect that he has particularly.

X Q. 487. Has he said anything to you about the Atlantic L L?

Ans. Yes; I think he did, but I am not sure, on some previous occasion.

X Q. 488. Have you ever handled the Atlantic L L?

Ans. Sold them?

X Q. 489. Yes, sir.

Ans. As agents?

X Q. 490. Yes.

Ans. No, sir; we have never been the agents of the Atlantic Mill.

X Q. 491. Have you ever handled the goods in any way?

Ans. Do you mean put my hands on them?

X Q. 492. I mean dealt in them.

Ans. When I was in the jobbing business twenty-two or three years ago.

83 X Q. 493. How long ago?

A. Twenty-four or five years ago.

X Q. 494. To what extent did you handle the Atlantic L L twenty-four years ago?

Ans. Well, I was a partner in S. B. Chittenden & Co. at one time, and that firm were the largest sellers for a considerable time of anybody in the trade on Atlantic goods; I bought them myself when I was a partner of Chittenden.

X Q. 495. Twenty-four years ago the Atlantic L L weighed 4.56 yards to the pound, did they not?

Ans. Well, I never bought, to the best of my recollection—although the largest buyer of Atlantic goods at that time—I never myself bought an L L that I can recollect; the production of that mill on this article was so small that it was of not much consequence in the trade; I never recollect an Atlantic L L except as a five-yard sheeting, or about that.

X Q. 496. From 1862 up to 1872, for a period of ten years, were not the Atlantic L L a 4.56 yards to the pound goods?

Ans. They may have been, but I don't know; I couldn't answer that question.

X Q. 497. What is your best recollection as to the grade of sheeting so stamped?

Ans. I was a very large buyer of Atlantic sheetings from 1857 to 1861 and 1862; probably the largest buyer in the United States, I think. I don't recollect that I ever bought a bale of Atlantic L L.; we used to buy Atlantic A and Atlantic L and several of their brands very largely, and a brand they call Pacific, but I can't recall that I ever bought a bale of L L, and I did not know they made them at that time.

X Q. 498. You knew where the L L were manufactured and of their being in the trade?

84 Ans. I don't recollect that they were ever made—that is, when I was a buyer of the goods. I have known subsequently that the goods have been made, but they have been made in such small quantities that they have made no impression upon my mind as a large buyer of domestic goods.

X Q. 499. Do you say that your remembrance of Atlantic L L's would not go back further than twenty-four years?

Ans. It wouldn't go back as far as that—anything like it. I don't recollect anything about them except as a 5-yard article in a small way.

X Q. 500. Do you state that the Lawrence L L are uniform in weight?

Ans. Yes, sir; as far as any goods can be made.

X Q. 501. Don't you know that they vary from 40,000 to 60,000 pounds on a production of a year of that kind of sheeting?

Ans. I have never been into figures of that kind at all. This I do know, however, and say as an expert, that the uniformity of the Lawrence L L has been remarkable both in weight and count and as uniform as it is possible for any mill in the world to produce a similar class of goods.

X Q. 502. Do you know whether the Lawrence L L sheeting varies from 40,000 to 60,000 pounds on the production of a year?

Ans. No; I don't.

X Q. 503. Would you swear either way on that subject?

Ans. Not a word.

X Q. 504. What other grade of sheeting aside from the 4-yard sheeting has the Lawrence Mill manufactured?

Ans. They have made in a small way occasionally an article we call a Lawrence X X.

85 X Q. 505. Just state the different grades of sheeting they have manufactured right through?

Ans. In years past, during my connection with it, it used to make a standard sheeting called "Lawrence C;" also another standard sheeting we called "St. Lawrence O." Then we used to make some few grades of fine goods, but that is so long ago that I have forgotten them.

X Q. 506. Within the last ten or fifteen years?

Ans. We have made nothing that I can recall but Lawrence X X and L L; nothing of any moment.

X Q. 507. What does X X signify?

Ans. It is the designating mark of that particular cloth.

X Q. 508. That particular grade?

Ans. That particular grade of cloth.

X Q. 509. Is the L L the designating mark of the 4-yard cloth?

Ans. Yes, sir; of the 4-yard cloth made by that mill.

X Q. 510. When you see the words "Lawrence Mills X X" on cloth you know it is made by that mill and is of a certain grade?

Ans. Yes.

X Q. 511. When you see the words "Lawrence Mills L L" on cloth you know it is made by that mill and is of a certain grade?

Ans. Yes.

X Q. 512. Do other mills use the letters X X as a designating mark?

Ans. Not that I recollect.

X Q. 513. You don't know as to that?

86 Ans. I never heard of it; I don't think they do. The mark has never been of sufficient importance to induce any one to copy it.

X Q. 514. Do you know how many different mills in the United States are now making 4-yard sheetings?

Ans. No; a good many, however. The old L L has been a very great target.

Defendants' counsel except to the last part of the above answer as not being responsive—as volunteered by the witness.

X Q. 515. I understand you to say that the bull rampant or the bull's head never has been on the Shawmut L L?

Ans. No, sir; it never has.

X Q. 516. What else has been on?

Ans. There has been the word "Shawmut" in the place of "Lawrence;" I can't recollect whether there is any other change or not; it has been Shawmut L L. I very seldom saw them, we made so few.

X Q. 517. Have you dealt in any L L goods besides those made by complainant?

Ans. In L L goods—I don't quite understand your question.

X Q. 518. I mean just what I say—have you dealt in any L L sheetings?

Ans. We have never sold any other goods under the L L brand than those made by the Lawrence Manufacturing Co.

X Q. 519. Have you never sold any made by any of the defendants to this suit?

Ans. No, sir.

X Q. 520. Have you sold or dealt in any way in any L L sheetings that were four yards to the pound, or thereabouts?

Ans. O, we have made goods four yards to the pound or thereabouts.

87 X Q. 521. Stamped L L, aside from the Lawrence?

Ans. No.

X Q. 522. Your business, as I understand you, has been, so far as this grade of sheeting is concerned, with the complainant, has it?

Ans. We have never sold any goods stamped with the L L stamp except those made by the Lawrence Manufacturing Co.

X Q. 523. And you have had the exclusive control of the complainant's goods of that grade?

Ans. Yes, sir.

The WITNESS: When I say "we made" in answering questions Nos. 507 and 508 I mean to say "the Lawrence Manufacturing Company made." We always considered ourselves partners of the mill."

X Q. 524. When you speak about L L sheetings you speak of your experience. You have known for the past ten years that other mills have been manufacturing four-yard sheetings and stamped them L L.

Ans. Yes. I don't know that they have for fifteen years, but for several years back. Yes; I have always been in favor of bringing this action long before I did.

Defendants' counsel except to the last part of above answer as not being responsive.

X Q. 525. The action brought against the Aurora Cotton Mill Company is the first one ever brought by the Lawrence Mills for any alleged infringement of its rights in the use of the letters L L?

Ans. I believe it is; yes, sir.

X Q. 526. Had there been any brought you would have known it, of course?

88 Ans. I should have known it, probably; likely to have done so.

X Q. 527. I understood you to state in direct examination that there were two or three different kinds or brands of four-yard sheetings made at the time the Lawrence people changed the fold of their four-yard sheetings and put the L L on them in place of the L?

Ans. Yes; there may have been more, but I recollect——

X Q. 528. (Interrupting.) You recollect that number?

Ans. Yes; there were two or three sold.

X Q. 529. You spoke of receiving orders for goods which always called for L L. Those were all written orders, were they not?

Ans. We had a great many telegraphed orders.

X Q. 530. They were either by mail or telegraph?

Ans. Or verbal. People would come in and say: "What is the price of L L?" That is all they would say.

X Q. 531. Your customers, were they?

Ans. Our customers.

X Q. 532. It was generally understood, was it not, that you had the selling agency of complainant's goods of that brand?

Ans. Yes; all the trade knew it.

X Q. 533. And that you sold no other goods (L L goods) of that grade or brand?

Ans. I don't know what you mean by that question.

X Q. 534. The trade understood that your firm never sold L L goods of four yards to the pound for any other manufacturing company in the United States than the Lawrence Manufacturing Company during the time it was selling L L goods for said Lawrence Company?

89 Ans. We sold four-yard goods made by other mills, if that is what you want. All I can answer to that question is this: We never sold a piece of goods stamped with L L, of four yards weight, except those made by the Lawrence Manufacturing Company; but our other mills did make goods of four yards to the pound.

X Q. 535. The trade understood that you sold no L L goods of any other manufacture aside from complainant's?

Ans. I have answered that question two or three times.

X Q. 536. Yes or no?

Ans. The trade understood that we sold no other goods with an L L stamp on them except those made by the Lawrence Manufacturing Company.

Redirect examination by Mr. RAINEY:

Q. 537. In your cross-examination when the question was asked you, if you knew of either of the defendants selling goods on a guaranty as to price, you mentioned the Janesville Manufacturing Company. Did you ever know of the Beaver Dam Mills furnishing goods to jobbers in this manner?

Ans. Yes, sir.

Q. 538. Did you ever know of the Evansville Manufacturing Company doing this?

Ans. No, sir, except from hearsay; as a general practice of those mills, that is all.

Q. 539. You stated in your cross-examination that the Lawrence Mills was the name of the complainant company?

Ans. Yes.

Q. 540. Are you not mistaken about that?

Ans. Lawrence Manufacturing Company is the exact title.

Q. 541. In your cross-examination, with reference to the At-

90 lantic L L, how do you wish to be understood as to the first time you knew that the Atlantic Mill stamped any grade of goods with L L?

Ans. I did not know that they had actually done it until the time this suit was commenced, I believe; I think it was entire news to me up to that time.

Q. 542. And the L L placed upon sheetings by the Atlantic Mills represents what class of sheetings?

Ans. Five yards, or about that; I never weighed a piece, but that is their general reputation.

Q. 543. Do such goods come in competition with the Lawrence L L?

Ans. Not the least in the world.

Q. 544. Or with any other four-yard goods?

Ans. Not the least in the world.

Q. 545. What class of goods were made by the Lawrence Manufacturing Company and branded O, and C, and X X?

Ans. Lawrence C were 2.85 goods; St. Lawrence O was also a 2.85 cloth, and Lawrence X X was a 3.25.

Q. 546. Did either of these marks of goods come in competition in the market with the L L's or with any other four-yard goods?

Ans. Not in the least.

Q. 547. Each was known to the trade as a distinct class of goods?

Ans. Yes.

Recross-examination:

X Q. 548. Under what name were these other goods you have just mentioned known in the trade?

91 Ans. As goods made by the Lawrence Manufacturing Company, and they were called in the trade Lawrence C, St. Lawrence O, and Lawrence Two X's.

The WITNESS: Referring to question No. 494 in my cross-examination, I wish to say that I did not hear the words "Atlantic L L" therein. I understood the question to be "To what extent did you handle Atlantic goods twenty-four years ago?" and my answer thereto was intended to apply to the handling of Atlantic goods generally, and not Atlantic L L particularly.

CHAS. S. SMITH.

Subscribed and sworn to before me this 26th day of May, 1886.

CLINTON S. HARRIS,
Notary Public, Kings County.

Certificate filed in New York Co.

92 HASTINGS E. PAGE, being duly sworn, testifies as follows:

Q. 549. State your name, age, residence, and occupation.

Ans. My name is Hastings E. Page; age, 23; of 318 Union St., Brooklyn, N. Y.; salesman for Tefft, Weller & Co.

Q. 550. What business is Tefft, Weller & Co. engaged in?

Ans. Importing dry goods—wholesale dry goods.

Q. 551. How long have you been in the employ of this firm, and what are your particular duties?

Ans. Ten years; my duties are to assist Mr. Clark in this department and selling domestic goods in this department—selling cotton entirely.

Q. 552. Among such cotton goods does this firm handle four-yard sheetings branded L L?

Ans. Yes.

Q. 553. Does it handle other four-yard sheetings?

Ans. Yes.

Q. 554. What significance to you has the symbol L L when stamped on sheetings—what does it mean?

Ans. It has this: When any customer coming in and enquiring for "L L," without stating anything but L L, the price would be given on the Lawrence L L, which I, and, I think, pretty much everybody engaged in jobbing domestics, considers the L L.

Q. 555. Then to your mind the significance of L L means four-yard goods manufactured by the Lawrence M'n'f'g Co.; is that correct?

Ans. Yes; when inquired for in the way before stated.

93 Cross-examination:

X Q. 556. You know, then, do you, that there are other four-yard sheetings in the trade stamped with letters L L thereon?

Ans. Yes.

X Q. 557. How many?

Ans. There is but one jobbed in New York to any extent; that is the Graniteville L L. There are three or four more Western cottons that I have never seen here, but have heard them spoken of, such as Michigan L L, Hoosier L L, and others, which I don't think of just this minute, that our customers frequently quote us at a lower price, or the same price, and claim they like them fully as well; more especially the small jobbers seem to be fond of them for the reason, they claim, that the L L will sell most anything that is similar in weight and count to the Lawrence L L.

Excepted to by defendants' attorneys—that is, the last part—as being volunteered by the witness.

X Q. 558. Did you suppose, until this exception was taken, that counsel for defendants represented complainant, with Mr. Rainey, and did you not state that Mr. Rainey ought to have posted you on it?

Ans. I did; I thought you gentlemen were all training together.

X Q. 559. When you learned that we represented these Western companies did you not state that "We want to knock you fellows out?"

Ans. I won't answer that, because I supposed we were all through, and was not said in the spirit in which you have written it; as what answers I have given here—in fact the whole thing has been done without any suggestions from anybody.

94 X Q. 560. Your trade of this grade of sheeting is and has been with the Lawrence L L?

Ans. Three-fourths of it has been done with that brand; in fact, Lawrence L L sell themselves.

Except to the expression, "In fact, the Lawrence sell for themselves."

X Q. 561. What is the brand or brands of the other one-fourth of this goods sold by you?

Ans. Graniteville L L and Atlantic P and Tremont C C.

X Q. 562. Do the letters L L when used on complainant's goods indicate a sheeting of four yards to the pound?

Ans. Yes, so far as my knowledge goes, and believe also.

X Q. 563. When used on the Graniteville goods does it indicate the same thing—that is, four yards to the pound?

Ans. Yes, as far as my experience goes.

X Q. 564. Look at the letters L L on the goods manufactured by the defendants, respectively, and now shown witness, marked Exhibits 3, 4, 5, and 6, in the deposition of Chas. S. Smith, and state if the letters L L on said exhibits are not what are known in the trade as outlined or ornamented letters.

Ans. Yes; it is not the way the letters are made, but it is the letters themselves that make the trouble and mislead the customers.

Counsel for defendants except to all of that answer after the word yes as being volunteered by the witness and not responsive to the questions.

X Q. 565. Are not the letters L L on the goods of complainant what are known in the trade as block letters?

Ans. Yes; they are.

X Q. 566. Are not the letters of the manufacture of the defendants and the complainant dissimilar in appearance?

95 Ans. Yes.

X Q. 567. Do you know in the trade a grade of sheeting known as Shawmut L L?

Ans. Yes.

X Q. 568. Do you handle Shawmut L L?

Ans. Yes, occasionally.

X Q. 569. Who manufactures the Shawmut L L?

Ans. They are imperfections or supposed to be imperfections of the Lawrence L L and sold as seconds.

X Q. 570. Shawmut L L, being an inferior grade of Lawrence L L, commands a lower price on the market, do they not?

Ans. Slightly.

X Q. 571. The one is known as the Shawmut L L and the other as Lawrence L L to distinguish one from the other?

Ans. Yes.

X Q. 572. You are, as I understand in your direct examination, only about 23 years of age?

Ans. Yes.

X Q. 573. Your experience in the trade, then, is limited to New York?

Ans. Yes.

X Q. 574. Do you handled Atlantic L L in this house?

Ans. Yes.

X Q. 575. How long have you handled the Atlantic L L?

Ans. Off and on for five years or more.

X Q. 576. Your customers understand, do they not, that the Graniteville L L and the Atlantic L L are not manufactured by complainant?

96 Ans. Customers don't know anything about it.

X Q. 577. Do you mean by that that your customers don't know where any of your goods are made?

Ans. Speaking in a general way, they do not.

X Q. 578. They understand, of course, that the Graniteville L L, the Lawrence L L, and the Atlantic L L are not the same goods and are manfactured by different companies?

Ans. They, of course, understand that they are not the same goods.

X Q. 579. You do not sell the Graniteville L L for the purpose and with the effect of leading your customers to believe that they are the product of the Lawrence Manufacturing Company?

Ans. No.

Redirect:

R. D. Q. 580. The Atlantic L L are a five-yards goods, so known by the trade?

Ans. Yes.

R. D. Q. 581. Would you or not suppose that the trade would be deceived by seeing the letters L L stamped on 4-yard sheetings similar to Exhibits 3, 4, 5, and 6, and led to believe they were goods made by the Lawrence Manufacturing Company?

Ans. The trade in general would.

Recross:

Re-X Q. 582. Is the same true of the Atlantic L L appearing in stock?

Ans. For the reason that the goods are folded up differently, it is not.

97 Re-X Q. 583. The way the goods are folded, then, is what would deceive the trade?

Ans. Yes; it would have a strong bearing that way.

Re-X Q. 584. Can a casual observer in the trade, without feeling of the goods, by observation alone, tell whether goods are four yards, four and a half, or five yards to the pound?

Ans. No.

HASTINGS E. PAGE.

Subscribed and sworn to before me this 21st day of May, 1886.

CLINTON S. HARRIS,
Notary Public, Kings County.

Certificate filed in New York Co.

STATE OF NEW YORK, }
County of New York, } ss:

The foregoing depositions of Walter M. Smith, Edward E. Eames, Charles S. Smith, and Hastings E. Page were taken before me by

consent of the parties, and I hereby certify that the above witnesses were severally duly sworn before me after said depositions were reduced to writing and signed by them.

CLINTON S. HARRIS,
Notary Public, Kings County.

Certificate filed in New York county.

My fees, $8.00, paid by complainant, except for deposition of Smith.

CLINTON S. HARRIS.

98 PHILADELPHIA, PA., *May* 25, 1886.

Deposition of Wm. Doughten, taken this day in city of Philadelphia, in cases of Lawrence Manufacturing Co. against Aurora Cotton Mills and others, and under the same stipulation made in city of Boston at taking of deposition of John Kilburn, etc.

WM. DOUGHTEN, being duly sworn, deposes as follows:

Question by complainant's attorney:

Q. 585. State your name, age, residence, and occupation.

Ans. Name, William Doughten; age, sixty; residence, city of Philadelphia, Pa.; am wholesale dealer and jobber in dry goods, including domestics.

Q. 586. How long have you been engaged in the dry-goods business?

Ans. For twenty-two years on my own account; I have been selling dry goods in this city for some thirty-six years.

Q. 587. Do you know the signification in the trade, when the same is applied to sheetings, of symbol or trade-mark "L L?" If so, please state what is its signification.

Ans. We take it for granted when parties order or speak of "L L" sheetings that it is the "Lawrence L L" they want. We should not send any other "L L" unless specified.

Q. 588. What reputation has the L L goods for quality?

Ans. They are exceedingly popular goods.

Cross-examination:

X Q. 589. Do you handle the Lawrence L L sheeting; and, if so, how long have you handled them?

Ans. We do keep the Lawrence L L sheetings generally, and have sold them for several years.

99 X Q. 590. At the times you have kept and sold Lawrence L L sheetings did you sell any other four-yard sheetings made by other manufacturers and branded L L? And, if so, state of what make they were and the extent to which you handled them contemporaneously with the Lawrence sheetings.

Ans. We have sold other makes of L L sheetings, namely, Ettrick L L and Shawmut L L, and we have sold as many of these brands as we have of Lawrence L L.

X Q. 591. Did you not generally designate and distinguish them as "Ettrick L L," "Shawmut L L," and "Lawrence L L?"

Ans. We did.

X Q. 592. In your answer to the third question asked you in which you say, "We take it for granted when persons order or speak of L L sheetings that it is the Lawrence L L they want," you are speaking of your own trade with your customers and your own personal understanding, are you not?

Ans. I speak of the general acceptation, and think it applies to the trade universal.

(After the question was asked the witness said there were many parties that did not keep any other double L L, but the witness said he did not wish this to go down as a part of his answer.

ISAIAH MATLACK, *N. P.*)

X Q. 593. Are there not a number of sheetings sold in the trade branded L L made by different manufacturers?

Ans. There is.

X Q. 594. Does not the trade in speaking of them couple the L L with the name of the manufacturer or some other word branded upon them, as, for instance, Lawrence L L, Shawmut L L, Ettrick L L, etc.?

Ans. They generally do, but not in all cases.

X Q. 595. From whom have you purchased the Lawrence L L and Shawmut L L?

100 Ans. George C. Richardson & Co. and Smith, Hogg & Gardner.

X Q. 596. The largest sale of such goods to consumers is in the West and South, is it not?

Ans. Yes, sir; I presume it is. We do not do much in that trade, but sell more to the near trade.

X Q. 597. How is the Ettrick L L branded? Give the marks and words upon it.

Ans. Ettrick Man'f'g Co.; under that a meaningless design, underneath that extra sheeting, and then L L.

X Q. 598. Do you not invoice that goods to your customers as Ettrick L L sheetings and the Shawmut L L as Shawmut L L and the Lawrence as Lawrence L L?

Ans. We do.

X Q. 599. How many yards to the pound is the Ettrick L L sheeting?

Ans. Four yards.

X Q. 600. Do you sell and seek to produce the impression upon your customers directly or indirectly that the Ettrick L L is made by the Lawrence Manufacturing Company?

Ans. We do not.

X Q. 601. Do you suppose or have you any reason to think that your customers are deluded and purchase from you the Ettrick L L under the belief that they are the same goods as the Lawrence L L, manufactured by the Lawrence Mills?

Ans. We think persons sometimes may suppose they are the same goods with another brand upon them.

X Q. 602. That is a mere supposition upon your part?

Ans. Yes.

101 Redirect examination:

R. D. Q. 604. How long have you known and been selling the Ettrick L L?

Ans. Three years; it is difficult for me to recollect; it may be two years.

R. D. Q. 605. Are not the letters L L on the Ettrick sheetings likely to deceive an ordinary customer in taking such goods to be the Lawrence L L? I only ask your opinion.

Ans. I think they would in some cases.

WILLIAM DOUGHTEN.

Subscribed and sworn to before me this 25th day of May, A. D. 1886.

[SEAL.] ISAIAH MATLACK,
Notary Public.

Notary fees, paid by complainant, $2.50.

I. M., *N. P.*

PHILADELPHIA, PA., *May* 25, 1886.

It is stipulated that should Jefferson M. Howett be sworn on part of the complainant he would testify he was a member of the firm of Howett, Glass & Co., wholesale importers and jobbers at Philadelphia; that he has been twenty years in business, and that his deposition would be in substance and effect, on direct and cross examination, the same as deposition of Wm. Doughten, taken this day at Philadelphia, in the several cases of Lawrence Manufacturing Company *vs.* Aurora Cotton Mills and the other defendants
102 mentioned in the stipulation entered into at Boston in these several cases at taking of deposition of John Kilburn (that is, said witness would testify as did said Doughton), and that this stipulation may be read to same effect and force as if said Howett had been duly sworn and answered the several questions in direct and cross examination put to and answered by Wm. Doughten.

D. C. GIVENS,
J. M. DICKINSON,
A. J. HOPKINS,
For All the Defendants,
By J. M. DICKINSON.

103 Depositions taken by consent on this the 22d day of June, 1886, at Sedalia, Mo., before John B. Jaynes, notary public in and for the county of Pettis, State of Missouri, under the same stipulation and to the same effect as depositions taken in these causes, in May, at Boston and elsewhere.

J. M. Dickinson appeared and cross-examined for the Tenn.

Manufacturing Co., whose solicitor he is, and he also cross-examined for the Evansville Manufacturing Co. and the Aurora Cotton Mills, with the understanding that he had no right to appear for them and these depositions are only to be binding on them when his act is ratified by their respective solicitors, D. C. Givens and A. J. Hopkins.

H. W. MEUSCHKE, being duly sworn, deposes as follows:

By W. G. RAINEY, solicitor for complainant:

Q. 606. State your name, age, residence, and occupation.

Ans. My name is Henry W. Meuschke; age, 29; residence, Sedalia, Mo.; my occupation, retail dry-goods merchant.

Q. 607. How long have you been engaged as a dry-goods merchant?

Ans. For eleven years—nine years at Sedalia.

Q. 608. As a dry-goods merchant, state whether you sell to the retail trade brown sheetings stamped with the trade-mark or symbol of L L.

Ans. Yes, sir.

Q. 609. What significance or meaning to you and the trade here has this trade-mark?

Ans. Well, to me I do not know as it has any particularly, but to the trade, when they come in and ask for L L sheetings, I would suppose and think that it means Lawrence L L.

Q. 610. How long has this trade-mark or L L had the meaning?

104 Ans. As far as I can recollect, ever since I have been in business.

Q. 611. What is the reputation of these goods made by the Lawrence Manufacturing Co.?

Ans. It is considered a good sheeting.

Q. 612. Is it a popular sheeting in the trade?

Ans. Very.

Q. 613. How do your customers enquire for the sheeting?

Ans. Generally they call for the L L sheeting; some of them call for it by the right name, Lawrence L L, but not often.

Q. 614. Do your customers or do you speak of such sheetings as L L, or double L sheetings?

Ans. Both ways; sometimes as L L, sometimes double L. I do call it double L.

Cross-examination:

X Q. 615. You have handled 4-yard sheeting mainly of the Lawrence Mills make, have you not?

Ans. Yes, sir; mostly.

X Q. 616. How are those sheetings billed or invoiced to you; under what designation?

Ans. Lawrence double L.

X Q. 617. How do you sell and bill them?

Ans. Sometimes Lawrence L L, and sometimes as L L only.

X Q. 618. Have you ever seen or handled the brown sheeting stamped Shawmut L L?

Ans. Not to my knowledge.

X Q. 619. Is not the 4-yard sheeting made by the Lawrence
105 Mills usually known and designated among jobbers and retailers as Lawrence L L sheeting?

Ans. It is among jobbers, but not so much among retailers.

X Q. 620. Is it not designated Lawrence L L among retailers more often than by the letters simply L L?

Ans. By the retail merchants it is.

X Q. 621. Then those goods are generally known and designated by jobbers and retail merchants as Lawrence L L sheetings, are they not?

Ans. Yes, sir.

X Q. 622. Have you at any time handled any other 4-yard sheeting made by factories other than the Lawrence Co. stamped L L?

Ans. Yes, sir; we have handled Graniteville L L.

X Q. 623. At such times did not you always distinguish the two as Lawrence L L and Graniteville L L?

Ans. No, sir; we often call them L L sheeting and sell them both as L L sheeting.

X Q. 624. Is it not generally understood among jobbers and retailers that L L stamped upon brown sheetings indicate that they run 4 yards to the pound, and is not L L accepted by them as expressing this fact?

Ans. Well, that was my understanding.

X Q. 625. Have you ever attempted any deception by selling the Graniteville L L, under the suggestion, directly or impliedly, that they were in fact made by the Lawrence Manufacturing Co.?

Ans. No, sir.

X Q. 626. Suppose one of your customers had to your knowledge been getting of you Graniteville L L sheeting and not Law-
106 rence L L, and afterwards should make an order for L L sheeting, would you not send him the Graniteville?

Ans. Yes, sir.

X Q. 627. Reversing, now, the facts, and supposing he had been purchasing Lawrence L L, you would then send the Lawrence, would you not?

Ans. Yes, sir.

X Q. 628. State whether or not you have seen in the market with which you are familiar a brown sheeting stamped Atlantic Mills L L?

Ans. Yes, sir.

X Q. 629. A person looking at merely and not handling brown sheeting could not tell the difference as to weight, say, between 4-yard, 4.50, and 5-yard sheeting, could they?

Ans. No, sir; not unless they get very close to it and examine it very close.

X Q. 630. It would take an expert even then, would it not?

Ans. It would take a pretty good judge of goods.

Redirect examination:

Q. 631. With reference to other L L sheetings than the Lawrence, please state whether or not, in your opinion, the ordinary retail buyer from retail merchants would be deceived in supposing that they were purchasing Lawrence L L, were they familiar with such goods, when seeing the trade-mark L L stamped thereon.

Ans. You can sell the average customer any muslin with L L on them at the same price or for the same goods as the Lawrence L L.

Q. 632. Would not an ordinary customer, familiar with Lawrence L L, be deceived, by seeing L L stamped on goods of other manufacturers, in supposing them to be Lawrence goods?

107 Ans. That could be done with fully half of our customers, in my opinion.

Q. 633. How long have you been selling the "Graniteville L L" sheetings?

Ans. On and off for five years, I believe; I am not positive.

Recross-examination:

X Q. 634. Do not your customers when they come in simply ask for L L sheeting or such as they may want?

Ans. No, sir; they generally ask for brown muslin; some of them ask for the brand they want.

X Q. 635. How many of them look at the brand before purchasing, do you suppose?

Ans. Not half of them.

X Q. 636. The retail dealers know very well that the Graniteville goods are not made by the Lawrence Co., do they not?

Ans. I think they do; most of them do.

Redirect examination:

Q. 637. But when you order goods from jobbers you are particular to designate them as "L L" sheetings, are you not?

Ans. We designate as Graniteville L L, Lawrence L L, or either brand we may wish.

H. W. MEUSCHKE.

J. W. LYONS, being duly sworn, deposed as follows:

Q. 638. State your name, age, residence, and occupation.

Ans. Name, J. W. Lyons; age, 40; residence, Sedalia; occupation, retail dry-goods merchant.

108 Q. 639. How long have you been engaged in the business of retail dry-goods merchant, and where?

Ans. I have been engaged since 1869. I have been in business in Randolph Co., Mo., at Memphis, Mo., Columbia, Mo., and have a store there now, and just a few weeks at Sedalia.

Q. 640. As such merchant have you dealt in and sold brown sheetings stamped with the trade-mark L L?

Ans. I have.

Q. 641. For how long?

Ans. For twelve or fifteen years, that I remember of.

Q. 642. What meaning or significance is conveyed to your mind and the trade with which you are familiar, has this trade-mark L L when applied to sheetings?

Ans. It is a muslin made by the Lawrence Manufacturing Company.

Q. 643. Have you ever handled any other brown sheetings marked L L than goods made by Lawrence Manufacturing Company; if so, how were they stamped?

Ans. Yes, sir; I have handled other brown muslins stamped L L. Well, they are stamped with the name of the manufacturing company—for instance, Lancaster Mills, and the Beaver Dam, and others that I don't remember just now. Lancaster Mills we have in stock now.

Q. 644. Do you remember whether such L L sheetings was stamped with the words "Lancaster Mills," or simply the word "Lancaster?"

Ans. My impression is that they are "Lancaster Mills," and other than the Lawrence are stamped with the names of the mills.

Q. 645. Where are the Lancaster L L made, if you know?

Ans. I am not positive; we buy them of jobbers, Crow, Hargadone & Co., St. Louis, Mo.

109 Q. 646. When you have other sheetings than the Lawrence L L in stock at the same time with the Lawrence L L, which do you give preference to in selling to your customers?

Ans. We give preference to the one which affords us the best profit.

Q. 647. Have you ever given such preference as against the Lawrence L L? If so, how is this done?

Ans. Well, we expose for sale the muslin that affords the greatest profit.

Q. 648. If you can sell the Beaver Dam or Lancaster L L at any given time at a greater profit than the Lawrence L L, and should expose the former, what do you do with the Lawrence L L?

Ans. I would secrete it from the trade.

Q. 649. Have you ever secreted the Lawrence L L and exposed the Beaver Dam L L?

Ans. I have secreted the L L and sold other L L muslin.

Q. 650. Can you recall to mind whether you have ever sold the Beaver Dam L L or the Lancaster L L when having in stock the Lawrence L L, which you secreted?

Ans. I have sold other L L muslin when we have had in stock other than the Lawrence L L.

Q. 651. At such times would the Lawrence L L be secreted?

Ans. Yes.

Q. 652. Should a customer come in at such times and ask for L L muslin you would then sell him the Beaver Dam or Lancaster L L in preference to the Lawrence L L; is or not this correct?

Ans. Yes, sir; we would sell him the "Lancaster" or "Beaver Dam" in preference to the "L L."

110 Cross-examination:

X Q. 653. Do you mean to say that you allowed a customer to call for one brand of goods—that you deceived him by selling him a different brand, when he was under the impression that he was getting a different brand from the one you actually sold him?

Ans. No, sir; we did not deceive him.

X Q. 654. Then when he called for "L L" and you sold him "Lancaster" or "Beaver Dam" you understood that the letters L L applied to those brands as well as to the Lawrence Mills, did you not?

Ans. No, sir; I did not, for I think the customers carried only in their mind the two L's—L L.

X Q. 655. Do you think that when the customer called for L L he meant to indicate that he wanted goods made by the Lawrence Mills, or merely that he wanted the grade known as four-yard goods, irrespective of the maker?

Ans. I do not know what you mean by four-yard goods.

X Q. 656. I mean goods running four yards to the pound. With this explanation answer the last question.

Ans. I do not think the customer knew anything about that.

X Q. 657. Then when the customer, as you have described in answer to question No. 652, here read you, would ask you for double L muslin, what did you understand him to mean?

Ans. I understood him to mean he wanted muslin branded "L L," and such we would give him.

X Q. 658. You did not then understand that he meant to call particularly for muslin made by the Lawrence Mills?

Ans. No, sir; I do not think the trade knows anything about the Lawrence Mills. What I mean by trade is consumers of muslin.

111 Redirect examination:

Q. 659. But the jobbers and retail merchants know about the Lawrence Mills or the Lawrence Manufacturing Company, do they or not?

Ans. I don't know.

Q. 660. Do you or not know that there is an L L sheeting made by the Lawrence Mills or a sheeting called the "Lawrence L L?"

Ans. Yes, sir; I do.

Q. 661. In ordering such sheetings how do you make your order?

Ans. We name the brand of goods wanted.

Q. 662. Do you order them as "Lawrence L L" if you want Lawrence L L?

Ans. Yes, sir.

Q. 663. Did you ever order any double L sheeting as "Lawrence L L" and get any other than those branded "Lawrence L L?"

Defendant objects to this question as irrelevant and incompetent.

Ans. I think we have, but the jobber always sent an explanation.

Q. 664. What L L have you received when you have ordered "Lawrence L L?"

Ans. We usually receive what we order. If they ship us any other L L they send an explanation why they send any other L L in place of the "Lawrence L L." I can't recall name of brands so sent.

J. W. LYONS.

112 H. H. MAREAN, being duly sworn, deposes as follows:

Q. 665. State your name, age, residence, and occupation.

Ans. Name, H. H. Marean; age, 40; residence, Sedalia; occupation, retail dry goods.

Q. 666. How long have you been engaged in the dry-goods business?

Ans. Fifteen years.

Q. 667. As such merchant have you handled and sold brown sheeting stamped with "L L;" and, if so, what L L have you so handled?

Ans. Well, I have sold, since I have been in business here, more of the Lawrence L L sheeting.

Q. 668. What have you to say as to the quality of such sheeting and its popularity as compared to other brown sheetings?

Ans. It is a sheeting I always like, and I have always thought my trade liked it better; it suited me better than anything else.

Q. 669. Please state whether or not you have ever ordered Lawrence L L sheeting and received instead of Lawrence L L other L L; and, if so, what?

Defendant objects to this question as irrelevant and incompetent.

Ans. I think I have. I have received them with the understanding, though, that if I did not like them I could send them back. Well, I don't know if I can state positively, but I believe Beaver Dam and several other L L sheetings we have had sent us. It seems to me they wrote us that they were out of Lawrence L L.

Q. 670. Do you mean that these L L sheetings were sent you when you ordered "Lawrence L L?"

Ans. Yes; that is what I mean.

113 Q. 671. Will you be kind enough to give us the names, if you can remember them, of such L L sheetings so sent you when you ordered "Lawrence L L?"

Ans. Well, I don't know as I can remember. It seems to me Beaver Dam, or some other made down in Tennessee.

Q. 672. You have handled and sold Beaver Dam L L, have you not?

Ans. Yes; we have; a few.

Q. 673. Did you ever order them as "Beaver Dam L L?"

Ans. No, sir.

Q. 674. The L L which you think were made in Tennessee and

which were sent you, as above stated, do you recognize them as being called "Cumberland L L?"

Ans. Well, I don't recognize them as being called that particularly. I know it is an L L sheeting.

Q. 675. Do you know who sent you such sheetings?

Ans. I don't remember exactly, but somebody in St. Louis; either Sam'l C. Davis & Co., Simon Greggory & Co., or Crow, Hargadone & Co., as we purchase from all three, but it is my impression from Samuel C. Davis & Co.

Q. 676. Please state whether or not, in your opinion, the ordinary retail purchaser familiar with the Lawrence L L sheetings would be deceived by seeing "L L" stamped on other sheeting, such as "Beaver Dam" and "Cumberland," in supposing them to be the "Lawrence L L" sheeting.

Ans. No; I don't think they would—take a man of any ordinary sense.

Q. 677. Suppose if the rest of brand or stamp on such sheeting were concealed and only the L L exposed to view, is it not likely, then, that such a customer would be deceived? I am not speaking of the retail merchant, but the ordinary country customer who buys from the retail merchant.

114 Ans. Yes; I think it most probable that they might take it as "Lawrence L L sheeting or any other L L."

Q. 678. With the explanation in the last question, question 676 is repeated to the witness, or, to repeat my question: "Please state whether or not, in your opinion, the ordinary retail purchaser (I do not mean the retail merchant, but the purchaser from the merchant or the consumer) familiar with the Lawrence L L sheeting, would be deceived by seeing L L stamped on other sheetings, such as 'Beaver Dam' and 'Cumberland,' in supposing them to be the 'Lawrence L L' sheeting."

(Mr. Rainey, solicitor for complainant, over the exception of the defendant, here stated to the witness that his foregoing answer to question 676 was different from the answer witness had given Mr. Rainey to the same question privately before being put on the stand, and that witness had misunderstood his question 676.)

Ans. Well, I think it is more than likely they might take it for the "Lawrence L L" sheeting; that is my idea; I don't know whether it is correct or not; that is my opinion.

Q. 679. State whether or not the same would be your opinion with reference to sheeting stamped with "L L," as on Exhibit Four, known as Crescent City Mills stamp.

Ans. I don't see why it shouldn't be.

Q. 680. Same question as to sheetings branded "Hoosier State sheetings L L," which is here exhibited to witness.

Ans. I should think so.

This sample is offered in evidence as Exhibit No. 7.

Q. 681. Same question as to sample stamped "Badger State sheetings L L" (sample shown witness).

Ans. I should think so.

This sample is offered in evidence as No. 8.

Q. 682. Same question as to sheeting stamped "Pacolet Manufacturing Co. L L" (sample shown witness).

115 Ans. I should think so.

This sample is offered in evidence as Evidence No. 9.

Q. 683. Please examine Exhibit No. 5, stamped "Cumberland sheeting L L," and Exhibit No. 6, "Beaver Dam sheeting L L," and state whether you recognize these samples as being similar to those stamped upon sheetings sent you, as above stated, by you, "Beaver Dam sheeting L L" and "Cumberland L L?"

Ans. I think they are the same goods.

Cross-examination:

X Q. 684. Do you mean to say that this mistaking the several exhibits for "Lawrence L L" might occur with them spread out where the whole label is visible, or merely when folded, as stated in former questions, with only the "L L" visible to that customer?

Ans. I think that is liable to occur—sheeting with "L L" on it.

X Q. 685. Repeat the last question.

Ans. I think it is liable to occur, it makes no difference how they were folded. The L L is the prominent feature on them.

X Q. 686. How are the "Lawrence L L" sheetings billed or invoiced to you—under what title or name?

Ans. "Lawrence L L" usually, I think; I am not positive about that, but that is my opinion.

X Q. 687. Are they not known in the trade as "Lawrence L L" sheeting?

Ans. Lawrence double L sheeting is what I have always heard them spoken of.

X Q. 688. Have you ever sold "Shawmut L L" sheeting?

Ans. I think I have some years ago.

116 X Q. 689. Are they not known in the trade as "Shawmut L L?"

Ans. I think so.

X Q. 690. Have you ever handled or seen in the trade sheetings branded "Atlantic Mill L L?"

Ans. I don't remember that sheeting.

X Q. 691. Please examine Exhibit Five here shown you, and show what similarity, if any, there is between that and the brand on the "Lawrence L L" sheeting.

Ans. I see that it is "L L" sheeting.

X Q. 692. Are not the double L's in very different type and very dissimilar from those on the "Lawrence L L" goods?

Ans. I see a different type, and that is about all.

X Q. 693. Are they not considerably larger?

Ans. There seems to be a difference in size.

X Q. 694. Are not those on the "Lawrence" goods solid block letters and are not the others open fancy letters?

Ans. Yes; they don't seem to be exactly alike. They seem to be a little larger on the "Cumberland" than on the "Lawrence." They are very distinct, though, on the "Lawrence."

X Q. 695. Are not the other letters on the stamp different in size, appearance, and arrangement from those on the "Lawrence" goods?

Ans. Yes; they are different.

X Q. 696. Now, do you mean to say that a person familiar with the brand on the Lawrence goods could easily suppose that the other brand on the Cumberland goods was the same, and that they represented the same goods, by the same manufacturer?

Ans. No; I don't say that; for a person familiar with the brand, they would know the difference.

117 X Q. 697. Now, I will call your attention to the fact that question No. 678 and the following one, in answer to which, wherein you spoke of similarity in appearance, contained the words, the ordinary retail purchaser familiar with the Lawrence L L sheetings would be deceived by seeing L L stamped on Beaver Dam and the several samples shown you, and ask whether you meant to say that such deception might be produced upon one familiar with the Lawrence sheetings?

Ans. Well, not one familiar with the Lawrence L L sheeting. A consumer seeing L L on sheeting might possibly take it for Lawrence L L sheeting.

X Q. 698. When you received other L L sheeting from the jobbers instead of the Lawrence L L which you ordered you understood at the time that those sheetings were not sold to you as the Lawrence make, did you not?

Ans. Yes, sir; they were not sold to me for Lawrence.

X Q. 699. Is it not generally understood in the trade that L L upon sheeting indicated that it is of the grade known as four-yard sheeting—that is, measuring four yards to the pound?

Ans. No, sir; I never knew that before.

X Q. 700. Did you know what grade, rated by yards to the pound, the Lawrence Mills used L L upon?

Ans. No, sir; I do not.

X Q. 701. Did you ever see sheeting made by the Lawrence Company stamped L L alone, without the accompanying words Lawrence Mills sheeting?

Ans. No, sir; I never did.

X Q. 702. Then is not L L connected with the Lawrence goods as used in company with the words Lawrence Mills sheeting?

Ans. Double L sheeting is always connected with the words Lawrence Mills sheeting in my mind. It may be because I

118 have handled it more than any other.

X Q. 703. Do you undertake to say that among the retail purchasers and consumers there is any general understanding as to signification of the letters L L, or is it confined to jobbers or retail dealers?

Ans. Well, I don't know as I could answer that directly. We speak of these sheetings as L L sheetings, it seems to. I don't know as I can answer that question exactly.

X Q. 704. Do you handle any other L L sheeting than the Lawrence?

Ans. Yes; we have had the Beaver Dam, Cumberland, and Shawmut, and some others I don't remember. Sold more of the Lawrence than any other. I have sold these goods for fifteen years. These other double L goods were bought to take the place of Lawrence L L.

Defendant excepts to so much of witness' statement as follows: The words "I don't remember," as being volunteered by witness and not responsive.

X Q. 705. You called these other goods L L sheeting, did you not?

Ans. Yes, sir.

X Q. 706. You distinguished them from each other as Lawrence L L, Cumberland L L, Beaver Dam L L, etc., did you not?

Ans. Yes.

X Q. 707. They are so known to the trade, were they not?

Ans. Yes.

H. H. MAREAN.

Further taking depositions adjourned to Kansas City, Wednesday, June 23rd, 1886.

119 STATE OF MISSOURI, } ss:
Pettis County, }

I, John B. Jaynes, notary public, do certify that the foregoing depositions of H. W. Meuschke, J. W. Lyons, and H. H. Marean were taken before me on this 22nd day of June, 1886, by consent as above stated; that said depositions were written down by me and signed by the witnesses in my presence, said witnesses first being duly sworn by me.

Witness my hand and seal of office.

J. B. JAYNES,
Notary Public.

4,775 words, @ 15c. per hundred	$7 50
3 witnesses, @ 50c.	1 50
Seal	50
	$9 50

Charges in this State fixed by statute.

120 Depositions resumed at Kansas City, Missouri, on this 23d of June, 1886, pursuant to adjournment from Sedalia, Missouri, of June 22d.

Taken before L. E. Wyne, a notary public in and for Jackson county, Missouri.

Present: W. G. Rainey, solicitor for complainant, and J. M. Dickinson, solicitor for the Tenn. Manufacturing Co., and who also represents the solicitors for the Evansville Manufacturing Co. and Au-

rora Cotton Mills, as to witnesses whose names have been given in the notices, but as to other witnesses he only cross-examines, subject to approval of said solicitors.

GEORGE R. CHUMASERO, being duly sworn, deposes as follows:

Q. 708. State your name, age, residence, and occupation.

Ans. My name is George R. Chumasero; age, 44; residence, Kansas City; have charge of domestics in the wholesale house of W. B. Grimes.

Q. 709. How long have you been in the dry-goods business?

Ans. Something over twelve years.

Q. 710. Are you familiar with and have you sold heavy brown sheetings branded with the trade-mark L L?

Ans. I am and have.

Q. 711. What significance and meaning has this trade-mark to you and to the trade?

Ans. In receiving an order for L L heavy brown sheeting I should consider it meant a Lawrence L L.

Q. 712. Have you ever received any orders for L L sheeting without any other word or designation?

Defendant excepts to any answer of witness applying to written orders on the ground that the orders themselves are the best evidence.

121 Ans. I have.

Q. 713. What did you understand such an order to mean?

Ans. The Lawrence L L.

Q. 714. Is it or not a fact that the meaning of L L to the trade generally is goods made by the Lawrence Manufacturing Co.?

Ans. It is.

Q. 715. What have you to say about the popularity of Lawrence L L in the trade?

Ans. It is the most popular brand in the market at the price.

Q. 716. Does your house handle and sell any other L L sheeting than the Lawrence L L; if so, how are they branded and by whom made?

Ans. They do handle other L L—Pacolett L L, Kaw River L L, made in Indiana, and Pride of the South L L.

Cross-examination:

X Q. 717. Where have you been engaged in the dry-goods business and for what periods?

Ans. In Chicago, with John V. Farwell & Co., for twelve years, and also with W. B. Grimes' Dry-Goods Co. since the 15th of January, 1886.

X Q. 718. Then you have only been in the Kansas City trade for a few months?

Ans. For the last six months I have been in the Kansas City trade.

X Q. 719. In speaking of the meaning of L L on brown sheeting you merely give your own understanding as to its meaning, do you not?

Ans. I do.

122 X Q. 720. You have been most familiar with the Lawrence make of "L L" sheeting, have you not?

Ans. I have.

X Q. 721. In speaking of the meaning of L L on brown sheeting do you undertake to speak of its meaning in the general trade or do you merely speak as to your personal understanding of it?

Ans. Well, I speak, of course, as to my personal understanding of it and its being most popular L L among the trade.

X Q. 722. It is known in the trade as Lawrence L L sheeting, is it not?

Ans. It is.

X Q. 723. The other brands you mention are known in the trade as Kaw River L L and Pride of the South L L, are they not?

Ans. They are.

X Q. 724. The orders you spoke of receiving were written orders, were they not?

Ans. They were.

X Q. 725. Do you know in the trade a brown sheeting branded Atlantic Mills L L?

Ans. I do; they are fine brown, not heavy brown; they do not come in contact with Lawrence L L.

(Defendant excepts to all of the foregoing answer after the words "I do" on the ground that it was volunteered by the witness and was not responsive to the question.)

X Q. 726. They are known in the trade as Atlantic L L sheetings, are they not?

Ans. They are.

X Q. 727. In selling the Lawrence goods and the others you
123 bill them as Lawrence L L, Kaw River L L, and Pride of the South L L, do you not?

Ans. I do.

Redirect examination:

Q. 728. Have you ever received any orders for L L sheeting that were not written?

Ans. That is a pretty difficult question for me to answer; the order is either written or verbal; yes, I have received verbal orders for them.

Q. 729. When you received such verbal orders for L L sheeting what did you understand the party making such orders to want?

Ans. Lawrence L L.

Q. 730. When receiving such verbal and written orders for L L sheeting have you always filled them with Lawrence goods?

Ans. We have, as long as we had the Lawrence L L in stock; when we were out of L L we substituted other L L in place.

Recross-examination:

X Q. 731. Have you not customers who buy of you the Kaw River L L, and others who buy the Pride of the South L L?

Ans. We have.

X Q. 732. Do not such customers sometimes speak of these in short—*i. e.*, in abbreviations, as L L's?

Ans. There are exceptional cases, but very few.

X Q. 733. When you were out of Lawrence L L's, and furnished in their stead other L L goods, your customers understood that the L L's furnished them were not made by the Lawrence Mills, did they not?

124 Ans. I presume they did.

X Q. 734. You did not attempt to deceive them by sending another make of goods instead of the Lawrence make, did you?

Ans. I did not.

X Q. 735. In such cases did you not accompany the filling of the written or verbal orders with the statement that you were out of Lawrence L L?

Ans. I did.

X Q. 736. Is it not generally known to your trade that the Kaw River L L's and the Pride of the South L L's and the Pacolette L L's and the Lawrence are each made by different manufacturers?

Ans. It is so generally understood by the trade.

GEO. R. CHUMASERO.

By agreement the deposition to be taken at Kansas City shall be taken by S. H. Rickenbrode in short-hand and transcribed on the type-writer.

EDWIN B. WINGATE, being duly sworn, deposes as follows:

By Mr. RAINEY:

Q. 737. Please state your name, age, residence, and occupation.

Ans. Edwin B. Wingate; age, thirty-two; residence, Kansas City; occupation, buyer for W. B. Grimes Dry-Goods Company.

Q. 738. What business is the W. B. Grimes Dry-Goods Company engaged in?

Ans. Whosale dry goods, notions, and furnishing goods.

Q. 739. How long have you been employed by this concern?

Ans. Three years.

Q. 740. How long have you been engaged in the dry-goods

125 business.

Ans. Fifteen years.

Q. 741. Previous to your going into the employ of the Grimes Company where were you employed and with whom?

Ans. Bullene, Moores & Emery, of Kansas City.

Q. 742. What business is the latter firm engaged in?

Ans. Wholesale dry goods, notions, and furnishing goods.

Q. 743. These two firms, the Grimes Company and Bullene, Moore & Co., are known as what is called jobbers, also?

Ans. Yes, sir.

Q. 744. Do you know and are you familiar with brown sheetings known as the Lawrence "L L" goods?

Ans. Yes, sir.

Q. 745. How long have you been familiar with such sheetings?

Ans. Fifteen years.

Q. 746. Been purchasing and selling to the trade during that time?

Ans. Yes, sir.

Q. 747. What do you know of the popularity of these goods in the trade?

Ans. I know that they are popular goods.

Q. 748. Popular with the retail trade?

Ans. Yes, sir.

Q. 749. What "L L" sheeting is the house you are now with selling at present besides the Lawrence "L L?"

Ans. The Atlantic "L L" and Kaw River "L L."

Q. 750. Have you sold any other "L L" besides these just mentioned?

126 Ans. Yes, sir.

Q. 751. Which?

Ans. Graniteville, Pacolet L L, Aurora L L, and Beaver Dam L L.

Q. 752. For how long have you been familiar with these L L sheetings?

Ans. Fifteen years; ever since I have been in the trade.

Q. 753. In all these you have mentioned?

Ans. Did you ask for all of them?

Q. 754. Yes.

Ans. For four years.

Q. 755. Up to this, the past four years, the Lawrence was the L L sheeting you sold to the trade?

Defendant excepts to this question as leading.

Q. 756. I am confining my question to 4-yard goods?

Ans. Well, do you mean sell entirely to the trade?

Q. 757. What 4-yard L L goods did you sell to the trade previous to the past four years of any other besides the Lawrence L L?

Ans. Badger State L L; we used to sell that.

Q. 758. How long have you known the Badger State L L?

Ans. Eight years, I should say.

Q. 759. Previous to this time was there any other 4-yard goods stamped L L besides the Lawrence?

Ans. None that I know of, excepting the Shawmut L L, which was the second of the Lawrence L L.

Q. 760. The Atlantic "L L" are not 4-yard goods?

Ans. No, sir; they are 5-yard goods.

Q. 761. Do they come in competition in the market in any

127 way with the 4-yard goods with the Lawrence L L?

Ans. No, sir.

Q. 762. As compared with all other L L goods, how many of the Lawrence L L have you sold since other L L goods have come into the market?

Ans. Three times as many as any other one line.

Q. 763. As compared to all together?

Ans. Possibly one-third more.

Q. 764. One-third more of Lawrence L L than any other L L put together?

Ans. All that we have carried; yes, sir.

Q. 765. At the present time what proportion of Lawrence L L do you carry as compared to all other L L?

Ans. Twice as many. This is an estimate.

Q. 766. What firm or company did you purchase the Kaw River L L from?

Ans. Mackey, Nisbet & Co., Evansville, Ind.

Q. 767. Who are this firm?

Ans. They are jobbers of dry goods and notions at Evansville, and also agents for the Crescent Mill, I think; I do not know just exactly what the name of it is.

Q. 768. Did you recognize the mill as being the Evansville Manufacturing Company?

Ans. No, sir; I did not. I do not know that I ever heard the name of the mill.

Q. 769. You do not know but one mill at Evansville that manufactures these goods?

Ans. Cotton goods; no, sir.

Q. 770. State whether or not your house has this sheeting
128 stamped with Kaw River; and if so, why is it done?

Ans. Yes; we request Mackey, Nisbet & Co. to brand them that way, so as to give us a private brand of L L.

Q. 771. What necessity is there for having this private brand of L L, if any?

Ans. I do not know of any without it is to avoid competition with our neighbors on this line of goods.

Q. 772. Have your neighbors private brands also of L L?

Ans. Yes, sir.

Q. 773. Can you mention any?

Ans. Missouri Valley L L and Binghampton L L.

Q. 774. Who sell these L L, and by whom are they made?

Ans. Tootle, Hannah & Co. sell Missouri L L, and Bullene, Moores and Emery & Co. sell Binghampton L L; both made by Mackey, Nisbet & Co. or sold by them.

Q. 775. Do these L L that you have recently mentioned have any competition with the Lawrence L L?

Ans. Yes, sir.

Q. 776. Have you any knowledge of any other private brands on L L used by any other jobbers?

Ans. I do not know that I have.

Q. 777. You stated above that you have sold the Aurora L L. From whom did you get those goods? Where were they manufactured?

Ans. We got the Aurora L L from the Aurora Cotton Mills, Aurora, Illinois.

Q. 778. Can you state where and under what circumstances you purchased these goods?

Ans. I think about one year ago of the secretary of the mill.

129 He made a trip to Kansas City and purchased some Aurora L L, with some other cottons, from him.

Q. 779. Did you know of the Aurora L L before he came here?

A. Yes, sir; I had bought them once before.

Q. 780. Was there anything peculiar in your arrangement you made with him at the time with reference to the price of these goods?

Defendant excepts to this question as irrelevant and incompetent.

Ans. The goods were bought on memorandum and charged up to the house at the beginning of the fall season.

Q. 781. What time of the year did you buy on memorandum?

Ans. I think just about this time in 1885.

Q. 782. Was there any price given to you at the time, or was the price left open to be fixed by the price the goods should be that fall of the year?

Ans. I think the price was stated, but the goods were put on memorandum so as to come in the fall business—that is, in the last six months' business of 1885.

Q. 783. Did the treasurer of the company guarantee you the price as low as any 4-yard cotton or L L in the market in the fall of the year?

Ans. Yes, sir.

Q. 784. What L L cotton, if any, fixes the price of that class of goods?

Ans. I think most of the L L 4-yard cottons are based on the price made by the Lawrence Mills.

Q. 785. Is it or not a fact that it is known to the trade that the price fixed by the Lawrence Company on their L L governs the other L L?

130 A. I think it is; those that are perfectly standard 4-yard goods.

Q. 786. Is there any difference in the price of Lawrence L L and those other L L you have mentioned; if so, what, when delivered to you?

Ans. The only difference in the price is in the delivery; this varies from free delivery in our house to free delivery only to the Mississippi river point.

Q. 787. Please explain what you mean by this free delivery.

Ans. Freight prepaid to Kansas City or freight prepaid to Mississippi river point.

Q. 788. By whom?

Ans. By the manufacturers or agents of the respective cottons.

Q. 789. These L L goods?

Ans. Yes, sir.

Q. 790. Not of the Lawrence?

Ans. No; you are talking about the others.

Q. 791. What about the freight on the Lawrence goods; where do you purchase them and what freight do you pay?

Ans. We buy them of Townshend & Yale, New York, and most usually pay the freight from Lawrence, Mass., to Kansas City, about $1.25 per hundred pounds.

Q. 792. Then, if I understand you, you mean this; please correct me if I am in error: That the Lawrence Company fixes the price of 4-yard sheetings at Lawrence, Mass. Whatever that price may be you have to pay it there, and pay the freight on it from Lawrence to Kansas; but when you buy other 4-yard goods you get them at the same price as the Lawrence, freight free; that is correct, is it?

Ans. Yes, sir; that is correct.

131 Q. 793. To illustrate: If the market price fixed by the Lawrence Company should be five cents per yard you would have to pay that at Lawrence and the freight here; and if you were to buy the Aurora L L or the Evansville L L you would have to pay five cents delivered at Kansas City free; is that correct?

Ans. Yes.

Q. 794. Can you state how Lawrence L L, as a rule, is ordered by the trade of you?

Ans. So many pieces of so many bales of Lawrence L L brown cotton.

Q. 795. In filling such orders what is your custom?

Ans. When we have a Lawrence L L we most usually give them the entire quantity of that brand, if the customer is very desirable; if we have not the Lawrence L L we give them some other 4-yard cotton branded L L; or if the customer is not so desirable we divide the quantity, giving him a part of Lawrence L L and part of some other 4-yard cotton branded L L.

Q. 796. Do you try to keep on hand the Lawrence L L all the time?

Ans. Yes, sir.

Q. 797. Why?

Ans. Because the trade demands it.

Cross-examination by Mr. DICKINSON:

X Q. 798. When you divide the filling of the order as stated, giving some Lawrence L L and some of other brands of L L, you do not sell the other brands representing them to be the Lawrence make, do you?

Ans. No, sir.

X Q. 799. It is well understood by your customers, is it not, that the Lawrence L L and these other L L named are made by

132 different manufacturers, is it not?

Ans. Yes, sir.

X Q. 800. Are not the Lawrence goods known generally in the trade as Lawrence L L sheetings?

Ans. Yes, sir.

X Q. 801. And the others are known respectively as Aurora L L and Kaw River L L sheetings, etc., are they not?

Ans. Yes, sir.

X Q. 802. In purchasing Lawrence L L sheetings are they not billed to you Lawrence L L sheetings?

Ans. Yes, sir; I think they are; I think they are billed Lawrence L L.

X Q. 803. You sell them under the title and designation of Lawrence L L, do you not?

Ans. Yes, sir.

X Q. 804. How long have you known the Atlantic L L sheetings in the trade?

Ans. I think for five years.

X Q. 805. Is Mr. Geo. R. Chumasero employed in your house; and, if so, for how long has he been so employed?

Ans. Yes, sir; he is employed in our house and has been for five months.

X Q. 806. What special duties has he to perform there?

Ans. He has charge of the basement stocks.

X Q. 807. Just state what that stock is.

Ans. It includes the bleached and brown cottons, flannels, blankets, cheviots, and linens.

X Q. 808. Did you know him before he came there?

133 Ans. Not personally; no, sir.

X Q. 809. Did you know from him and his statements in what line of goods his experience had been in specially before he came to you?

Ans. He had charge of the flannel and blanket stock of J. V. Farwell & Co., Chicago.

X Q. 810. Is it not generally understood among jobbers and retailers who deal in brown sheetings that L L means and designates sheetings running four yards to the pound?

Ans. This is the general acceptation of the term, as I understand it, of the letters.

Redirect examination by Mr. RAINEY:

R. D. Q. —. Mr. Chumasero is a competent man to have charge of your domestic department, is he not, or you would not employ him?

Ans. Well, I could not say that he was a competent man on cottons; I would not take his judgment on any cottons. Of course, he did not know anything about them only during the last five months.

R. D. Q. 812. He fills his position there satisfactorily, does he not?

Ans. In selling the goods.

R. D. Q. 813. And he has shown his familiarity with the trade, has he not, since he has been in your employ?

Ans. As a salesman; yes, sir.

R. D. Q. 814. What scope of the country is reached by your house?

Ans. Kansas, Colorado, Nebraska, Indian Territory, and Western Missouri.

(Signed) EDWIN B. WINGATE.

134 KANSAS CITY, *June* 24, 1886.

Taking of testimony continued.

Parties present as before.

JAMES H. DAYTON, being first duly sworn, deposes as follows:

Examined by Mr. RAINEY:

Q. 815. State your name, age, residence, and occupation.

Ans. I stated my name; I am 49 years of age; residence, Kansas City, Missouri, and my occupation is merchant.

Q. 816. With whom are you employed, and for how long have you been so employed?

Ans. Well, I am a member of the firm of W. B. Grimes & Co. I am one of the directors of the concern.

Q. 817. And the question is, How long have you been with them?

Ans. Since 1881—since its organization. Well, now, one minute, please; you know when we first commenced it was not W. B. Grimes & Co. I have been with this concern ever since it was in existence.

Q. 818. Before you went with the present concern where were you employed and in what business?

Ans. A member of the concern of Tuttle, Hanna & Co.

Q. 819. The question is, Where?

Ans. Here at Kansas City.

Q. 820. Before you went with the firm of Tuttle, Hanna & Co. where and with whom were you employed?

Ans. As a member of the firm of R. L. McDonald & Co., of St. Joseph, Missouri, for a great many years.

Q. 821. Are these several firms jobbers in the dry-goods trade?

135 Ans. Yes, sir; exclusively.

Q. 822. For how long have you been engaged in the dry-goods business?

Ans. Twenty-one years exactly the first day of July.

Q. 823. Are you familiar with the jobbing and retail dry-goods trade in this country?

Ans. I could not say that I am familiar with the retail; I am with the jobbing; never done anything else.

Q. 824. What sections of the country have been reached by these several firms during the time you have been with them?

Ans. Iowa, Nebraska, Kansas, New Mexico, Colorado, Indian Territory, Missouri. We have sold but very few goods in Arkansas and Texas; we have sold goods in other territory; we sold some in Idaho and some in Montana.

Q. 825. What have been your particular duties while connected with these several firms?

Ans. Salesman; and the majority of the time I have been hand-

ling the domestic branch of the business; the domestic department, you might say.

Q. 826. Are you familiar with, and for how long have you been so familiar with, the brown sheetings, stamped with the trade-mark L L, made by the Lawrence Manufacturing Company?

Ans. Well, I have known them a great many years; I could not state just the years, but a great many years—for several years; probably—let's see, this is 1886—probably sixteen years.

Q. 827. Can you state the circumstances under which you first became familiar with these goods?

Ans. Yes, sir; I can.

Defendant excepts to the question as irrelevant and incompetent.

136 Ans. My recollection is, the first I ever heard of the Lawrence L L muslin it was handled by a party in the city of St. Joseph named Bailey. I forgot the style of the firm, but Mr. Bailey was a member of the firm. That is the first I ever heard of it. Through them they had introduced them to the trade, and from that fact we were called on to keep the goods in our stock.

Q. 828. By reason of the demand from the retailers?

Ans. Yes, sir; that is the first knowledge, I believe, I ever had of the Lawrence L L.

Q. —. Where were you at that time, and in what concern?

Ans. R. L. McDonald & Company, in St. Joseph, Missouri.

Q. 830. Did this firm supply themselves soon after that with this Lawrence L L?

Ans. Yes, sir; after that, certainly. Understand, we had been handling other goods that we did not care about changing our lines in. I think we kept just as few as possible for a number of years.

Q. 831. From that time to this you have been familiar, more or less, with the Lawrence L L?

Ans. Yes, sir.

Q. 832. State whether or not, after you first commenced handling these L L goods, they became popular to the trade; and, if so, to what extent.

Ans. Well, they became very popular with the trade.

Q. 833. They became a staple article?

Ans. Well, they are the staple article.

Q. 834. Well, did they at that time take that place as a staple article?

Ans. Well, not entirely; as I told you before, we endeavored to carry at the same time the goods we were accus-

137 tomed to carry.

Q. 835. These Agawam F's were 4-yard goods?

Ans. Yes, sir; that is my recollection.

Q. 836. Did you have the Atlantic P's at that time?

Ans. Yes, sir.

Q. 837. That is also 4-yard goods?

Ans. Yes, sir.

Q. 838. Please state whether or not the Lawrence L L super-

seded in the trade, or took its stand as against, these other 4-yard goods.

Ans. The Lawrence Company manufactured a great many of them and there was a great demand for Lawrence L L. Of course that would make less demand for other 4-yard goods. They were the same weight goods.

Q. 839. When did you leave St. Joseph?

Ans. In 1877.

Q. 840. Up to that time what had become the trade significance of the symbol or trade-mark "L L," when applied to sheetings?

Ans. What would you consider the L L?

Q. 841. Yes, sir.

Ans. I do not know whether there was any other L L at that time than the Lawrence or not. I do not think there was. I do not remember that there was up to 1877. There might have been.

Q. 842. Can you state whether or not it had—(interrupted).

Ans. I think possibly now that there was an Atlantic L L, which was a five-yard goods.

Q. 843. But that did not come in competition with the Lawrence L L?

138 Ans. No, sir; it was a different grade of goods.

Q. 844. Can you state whether at that time these goods had achieved in the trade the significance that L L meant a 4-yard goods made by the Lawrence Manufacturing Company?

Ans. I think it did; that is my idea.

Q. 845. What is the significance now; the same as it was then?

Ans. Well, there are a great many more L L sheetings made now of different brands.

Q. 846. What does L L mean to you and to the trade?

Ans. Do you mean a person just speaking of L L sheetings?

Q. 847. Yes, sir.

Ans. I should infer they meant Lawrence L L.

Q. 848. So far as your knowledge goes, state whether or not that is the significance attached to it by the trade generally.

Ans. I think it is.

Q. 849. For how long have you known and been familiar with other L L in the trade?

Ans. I could not say that positively; several years.

Q. 850. What L L have you been so familiar with?

Ans. I believe we used to carry at Tuttle, Hanna & Co.'s the Missouri Valley L L; I think there was a brand of it. We have carried Kaw River L L; we carried an L L of my own name, Dayton L L. Our sheetings were all branded in my own name when we first started.

Q. 851. What other L L?

Ans. There is a Pride of the South L L, a Pacolet L L, and I think there was a Badger State L L we used to handle at Tuttle, Hanna & Co.'s; I know, whatever the name was, I
139 think it was Badger State or Badger L L, I am not positive.

Q. 852. These L L's you speak of as being held by your present

firm, known as the Dayton L L, by whom were they manufactured?

Ans. We bought them of Mackey, Nisbet & Co.

Q. 853. You had them stamped Dayton?

Ans. Yes, sir; Dayton L L.

Q. 854. Afterwards how was it changed?

Ans. We carried other letters or grades of other goods that we had branded with different letters.

Q. 855. But this particular brand?

Ans. Was four-yard L L, now branded Kaw L L, the same goods exactly.

Q. 856. State whether or not these several L L came in competition in the trade with the Lawrence L L.

A. They are the same weight goods, you know; they are made 4-yard goods.

Q. 857. Do you handle them exclusively or do you handle the Lawrence L L also?

Ans. We handle Kaw, Pride of the South, the Pacolet, and the Lawrence L L's. Of course, the Dayton is not made any more since the Kaw took their place.

Q. 858. How is the price of these several four-yard goods as compared with the Lawrence?

Ans. The same; I think they are about the same.

Q. 859. There is some little difference made in freight?

Ans. I think possibly there is; I do not know that fact, because I am not buying.

Q. 860. Is it not a fact that your house are making a specialty in selling these Kaw River L L's?

140 Ans. Well, I could not answer that question, as I am not in the cotton department; I cannot say what they do about that.

Q. 861. Have you any knowledge as to how these L L goods are ordered from the several firms you have been connected with?

Ans. How do you mean?

Q. 862. Ordered from your house?

Ans. You mean from our trade in the country?

Q. 863. Yes.

Ans. They order whatever they want; they order Kaw or Pacolet or Lawrence, as a rule; sometimes they order just L L sheeting.

Q. 864. How is it understood when you get such an order?

Ans. Well, if the man is a good merchant I would infer he wanted Lawrence L L; we have a good deal of cross-roads trade in the country who do not know anything about the name of the L L—whether it is Lawrence or what it is; I would infer a good merchant would be ordering Lawrence if he was ordering L L.

Q. 865. How would you fill such orders if you would get an order for so many pieces of L L goods?

Ans. That part of the business is managed by another party, and I could not answer that question direct.

Q. 866. What is your opinion upon that subject?

Ans. Well, my idea is if they ordered a double L they would put in most anything except Lawrence L L.

Defendant excepts to the above as hearsay.

Ans. (continued). I make out all the orders at home and
141 have to answer for all the shortages, you know, and substitutions and everything of that character; that is what makes me a little familiar with this, but, of course, I do not know what the head of the department puts in or anything of that kind.

Q. 867. From whom have you obtained the information you have just spoken of with reference to the filling of such orders from employés in your house?

Ans. Employés in the house.

Defendant excepts to the above as irrelevant and hearsay.

Q. 868. Have you any knowledge on this point of any L L goods being returned by a merchant to whom it had been sent who had ordered L L sheeting, because the house did not send him Lawrence L L sheeting?

Ans. Well, I have.

Q. 869. That has been the case, has it not?

Ans. Yes, sir.

Q. 870. Do you know why they were returned?

Ans. Because they were not what they ordered.

Q. 871. Have you any knowledge of this fact: Whether any of the several houses you have been with having in stock Lawrence L L goods and other L L have kept the Lawrence L L concealed and only supplying them when the customer refused to have other L L?

Defendant excepts to the witness answering except of his own knowledge.

Ans. I know that other L L have been substituted when they could be in a great many cases — other L L.

Q. 872. Have you any knowledge or information that any of these houses have kept the Lawrence L L out of sight for the purpose of putting on the trade other L L they may have in stock?

142 Ans. I think they have.

Q. 873. That has been done, has it not?

Ans. I think so.

Q. 874. Is it or not a fact that since the Lawrence L L has obtained its reputation, since the significance of L L to the trade meant Lawrence goods, that each of these several houses with whom you have been have been compelled by the demands of the trade to keep the Lawrence goods on hand?

Ans. They always aim to keep some Lawrence L L on hand; sometimes they are out.

Q. 875. But the intention is to always?

Ans. Yes, as a rule.

Q. 876. And this supply is kept to meet the demand of the trade?

Ans. Yes, sir.

Q. 877. Is it not also a fact that were it not for this demand that

your present house would not buy the Lawrence L L to supply the trade, but supply the trade with other L L which they can handle cheaper?

Ans. I think likely.

Q. 878. Is it not a fact that you lose money, and has it not been so for some time past, in handling Lawrence L L?

Ans. Yes, sir.

Q. 879. What is the cause of this?

Ans. It is put upon the market as leaders, as we term it, to influence the trade.

Q. 880. Is it not a fact that the Lawrence control the trade—the price?

Ans. To that extent.

143 Q. 881. Then by reason of the competition of the other L L you are enabled to handle them at less price and make more money in selling them at the same price you do the Lawrence L L?

Ans. I think the price is about the same as Lawrence L L, except, perhaps, the freights.

Q. 882. Then in selling the same as the Lawrence — L you make more profit than on the Lawrence L L?

Ans. Make more profit.

Cross-examination by Mr. DICKINSON:

X Q. 883. How long have you known the Atlantic L L in the trade?

Ans. I cannot say.

X Q. 884. Have you not known them in the trade for fifteen years or more?

Ans. I cannot say; in fact, I am not very familiar with the goods.

X Q. 885. Your customers and the trade generally understand that the Lawrence L L and the Kaw L L and the others named by you as 4-yard goods are made by different manufacturers, do they not?

Ans. I presume they do.

X Q. 886. You do not sell these other L L goods under the suggestion, direct or implied, that they are made by the Lawrence Mills, do you?

Ans. No, sir.

X Q. 887. Are not these several brands known and designated in the trade as Lawrence L L, Kaw L L, Pacolet L L, and Pride of the South L L, &c., as to other L L goods?

Ans. Yes, sir.

144 X Q. 888. They are severally invoiced to you from those of whom you purchase as Lawrence L L, Pacolet L L, etc., are they not?

Ans. Yes, sir.

X Q. 889. When you sell them you invoice or bill them as Lawrence L L, Pacolet L L, etc., do you not?

Ans. Yes, sir. Now, our entry clerks sometimes might abbreviate; they might put down L L without the make, let it be Lawrence

or what it might be; they might abbreviate, you know, and without any intent of disguising or concealing the name.

X Q. 890. I am not asking you as to what might take place, but repeat the question and ask as to the general practice, so far as you know it?

Ans. The general practice is to write the name.

X Q. 891. Have not the words Lawrence L L been always coupled together in the trade in designating that goods, so far as you know?

Ans. Not always.

X Q. 892. Do not sometimes persons who have purchased Kaw L L and no other L L goods sometimes abbreviate also and speak of them as L L?

Ans. Very likely.

X Q. 893. In filling orders where Lawrence L L was ordered with other brands, have not your houses always explained to the customer the reason for substituting such other brands?

Ans. They have given some reason.

X Q. 894. They did not attempt to palm them off as Lawrence Mills make of L L, did they?

Ans. Never.

X Q. 895. Is it not a fact that L L used alone without con-
145 nection with other words is generally accepted by the trade as meaning and designating 4-yard goods?

Ans. I have never known any L L sheetings, to the best of my recollection, but what were 4-yard goods, or called 4-yard goods.

X Q. 896. Do not those letters indicate to the trade and are they not accepted generally as indicating that the goods are 4-yard goods?

Ans. I do not think three-fourths of our trade know what 4-yard goods are—what it means.

X Q. 897. Do they know what 5-yard goods means?

Ans. I think not.

X Q. 898. Have you any special connection with the cotton department of your house now?

Ans. Not at present; no special connection.

X Q. 899. Who has charge of that department?

Ans. Mr. E. B. Wingate.

X Q. 900. You say you never have known any L L sheetings but what was 4-yard goods. Now, let me ask if the Atlantic L L sheetings are not 5-yard goods?

Ans. I think they are.

X Q. 901. Are they not known in the trade as Atlantic L L?

Ans. I suppose so. I lost sight of the Atlantic L L goods when speaking of 4-yard goods.

Redirect examination by Mr. RAINEY:

R. D. Q. 902. All the jobbers know that L L means 4-yard sheeting, do they not?

Ans. I could not answer that question—all the jobbers.

R. D. Q. 903. What would be your opinion about that?

146 Ans. My opinion is they ought to know.

(Signed) J. H. DAYTON.

It is stipulated by the parties that the depositions of Edwin B. Wingate and Mr. J. H. Dayton shall be taken by the stenographer as above stated; that the said witness having signed the stenographer's notes the signature of the witnesses to the depositions is waived and they shall be copied by the stenographer.

STATE OF MISSOURI, }
County of Jackson, } *ss:*

I, L. E. Wyne, a notary public in and for said county and State, do hereby certify that the foregoing witnesses were duly sworn by me before they gave their testimony; that said depositions, excepting that of George Chumasero, were taken by consent by stenographer and written out on type-writer by said stenographer.

[SEAL.] L. E. WYNE,
Notary Public.

Fees, $6.90; paid by complainant.

L. E. WYNE, *Notary.*

147 (Questions 904 to 937, inclusive, were interrogatories written out to be propounded to the witness Evans, at Kansas City, but the same were not forwarded to be answered.—R. & R.)

Depositions of witnesses produced, sworn, and examined at the office of White & Spencer, in the city of St. Joseph, county of Buchanan, State of Missouri, before me, the undersigned, a notary public, in a certain cause now pending in the circuit court of the United States between The Lawrence Manufacturing Company, plaintiffs, and Aurora Cotton Mills *et al.*, defendants, on the part of the plaintiff.

CHARLES B. SANDERS, of lawful age, being sworn and examined on the part of the plaintiff, deposeth and says:

Questions by Mr. RAINEY:

Q. 937. State your name, age, residence and occupation.
Ans. My name is Charles B. Sanders; age, 29; residence, St. Joseph, Missouri; occupation, member firm R. L. McDonald, dry-goods jobbers.
Q. 938. What are your particular duties as member of said firm?
Ans. Well, my particular duties is manager of domestic department.
Q. 939. How long have you been engaged in said capacity?
Ans. About twelve years.
Q. 940. Does your firm handle brown sheeting known by the trade stamp as Lawrence L L?
Ans. Yes, sir.
Q. 941. How long have you been familiar with and handling Lawrence L L goods?
Ans. I could not state that—ever since I have been in business.

148 Q. 942. Please state whether your firm has been handling other L L's sheeting than the Lawrence; and, if so, what and how long.

Ans. Yes, we have handled other L L's—Badger State, six or eight years; Crescent City L L, can't say how long; Beaver Dam L L, can't state how long.

Q. 943. Is it or not a fact that your firm is sole agents for Badger State L L?

Ans. It is, sir.

Q. 944. State whether you have made any preference in pushing either of these L L's to the trade; and, if so, what.

Ans. We have, sir. The preference has been given to the Badger State L L.

Q. 945. State why you have given such preference to the Badger State.

Ans. Well, sir, we have a little better freight arrangements with the Badger State, which makes it a little cheaper.

Defendant excepts to the foregoing answer as irrelevant and incompetent.

Q. 946. What do you mean by saying "made a little better freight arrangements?"

Ans. We land the goods in this market cheaper than we could the Lawrence L L.

Q. 947. What difference, if any, do you make in the price of the Badger State L L?

Ans. None whatever.

Q. 948. All sold to the trade at the same price?

Ans. Yes, sir.

Q. 949. What success have you met with in pushing the Badger State L L in preference to the Lawrence L L?

Ans. Very good success.

149 Q. 950. Did you have any difficulty in making the substitution at first?

Ans. We had, perhaps, at first, but later we have not.

Q. 951. Have you tried to establish the Badger State or other L L's, exclusive of the Lawrence L L?

Ans. Yes, sir.

Q. 952. State whether you have succeeded in driving from your trade Lawrence L L; or, in other words, do you still keep in stock any of the Lawrence L L?

Ans. We do, sir.

Q. 953. Why do you keep Lawrence L L, if you try to sell Badger L L in preference to Lawrence L L?

Ans. Some of our customers prefer Lawrence L L.

Q. 954. And will not have the Badger L L; is that correct?

Ans. I could not state that.

Q. 955. Your statement is that they prefer Lawrence L L?

Ans. In some cases.

Q. 956. Do you ever get any orders for such goods simply as so many pieces of L L?

Ans. We do, sir.

Q. 957. How are such orders filled?

Ans. Mostly with Badger L L or any other L L we have the greatest quantity of at the time.

Q. 958. Have you ever filled such orders or order for Lawrence L L with Badger State L L or any other L L?

Ans. We have, sir.

Q. 959. Any complaint on the part of the customer ordering Lawrence L L?

150 Ans. Couldn't state now.

Q. 960. What is your best impression, now, about any complaint on the part of such customer? Do you remember to have heard any complaint at the time?

Ans. Such a case may be possible, but I can't state any now.

Q. 961. Who has charge of the orders as they come in and to make a substitution of other L L when Lawrence L L is ordered?

(Defendant excepts to this as suggested as a fact, but has not been proven.)

Ans. I do, sir.

Q. 962. Have you made such substitution?

Ans. Possibly may have; can't state any now.

Q. 963. What is your impression on that subject?

Ans. My impression is that such a thing has been done.

Q. 964. By whom is the Crescent City L L made, if you know?

Ans. Crescent City Mills.

Q. 965. Where is that, do you know?

Ans. Evansville, Indiana.

Cross-examination by J. M. DICKINSON:

Q. 966. Are not these several makes of goods known and described in the trade as Lawrence L L, Badger State L L, Beaver Dam L L, and Crescent City L L?

Ans. Yes, sir; they are.

Q. 967. When your house purchases them are they not severally invoiced or billed to you as Lawrence L L, Crescent City L L, etc., respectively?

Ans. They are, sir.

151 Q. 968. When you sell and bill them out of your house do you not describe them as Lawrence L L, Crescent L L, etc.?

Ans. Not always.

Q. 969. Do you sell other brands of L L sheeting different from the Lawrence L L, and try by any way, directly or impliedly, to palm them off on the customers as the make of the Lawrence Mills?

Ans. No, sir; we do not.

Q. 970. Is it not generally understood in the trade and by the purchasers, so far as you know, that the Crescent City L L and the Beaver Dam L L are made by different manufacturers from the one that makes the Lawrence L L?

Ans. It does, sir.

Q. 971. What brands has the Lawrence Mills L L goods upon it to designate it on the trade?

Ans. The name Lawrence and the trade-mark.

Q. 972. What is that?

Ans. It is a picture of a bull's head.

Q. 973. Is the bull's head on the Lawrence goods understood on the trade as a symbol designating their particular make of goods?

Ans. No, sir; not necessarily.

Q. 974. The bull's head used upon goods branded with the words Lawrence Mills is so accepted in the trade, is it not?

Ans. It might mean the product of the Lawrence Mills, but not necessarily four-yard goods.

Q. 975. Do not the letters L L, printed on brown sheeting, mean and are they not accepted generally in the trade, with which you are familiar, as meaning and designating four-yard goods?

Ans. They are understood to mean four-yard goods or
152 goods of that grade or quality.

Q. 976. When you receive an order for L L goods do you understand, according to the meaning attached to these letters in the trade, that the person ordering it means Lawrence L L and no other?

Ans. I do not so understand it, unless it is specified and described in particular.

Redirect examination by W. G. RAINEY:

Q. 977. Would you understand an order for L L simply to mean Badger State L L?

Ans. No, sir.

Q. 978. Or Beaver Dam or Crescent City L L?

Ans. No, sir.

That is all.

CHARLES B. SANDERS.

T. C. BYRNE, of lawful age, being sworn and examined, deposes and says:

Q. 979. State your name, age, residence, and occupation.

Ans. T. C. Byrne; St. Joseph; age, 27; salesman for Brittain, Richards & Co.

Q. 980. How long have you been with said firm?

Ans. About thirteen years; not that length of time in the capacity of salesman; about six years as salesman.

Q. 981. Have your duties been as traveling salesman or confined in the house?

Ans. I was traveling about six years during that time; the last six months I have been in the house.

Q. 982. Among other goods which you have handled and sold as such salesman have you sold a brown sheeting which has been known and described as L L sheeting?

153 Ans. Yes, sir.

Q. 983. What L L sheetings have you handled and sold?

Ans. I have sold Lawrence L L, Greylock L L, Graniteville L L, and Lancaster L L.

Q. 984. Where are the Greylock L L manufactured?

Ans. Greylock L L are manufactured by the Badger State Mills, and the Lancaster L L, I do not know where they are made.

Q. 985. Is the Greylock a private brand of your house and made upon their order?

Ans. No, sir; I do not so understand it as being a private brand.

Q. 986. What L L does your house now sell?

Ans. Lawrence L L only.

Q. 987. Why do you not sell other L L's at present?

Defendant objects to this question as leading and incompetent.

Ans. I might not be able to answer this; it is a long story. I am only employed as salesman, and for that reason selling the goods that the house furnishes me to sell.

Q. 988. Give us your impression as to why your house does not handle any other L L's but the Lawrence L L.

Defendant excepts to witness stating his impression or anything that is hearsay.

Ans. Some L L we have got to sell, and others we have tried to sell unsuccessfully.

Q. 989. Is it not a fact that you know, of your own knowledge, that the efforts of your house to sell other L L have failed?

Defendant excepts to this question as leading.

Ans. Yes, sir.

154 Q. 990. Why were those efforts a failure?

Ans. The reasons I cannot give.

Q. 991. Is it not a fact that one of the reasons of such failure is that the trade for the Lawrence L L was to such an extent that your house concluded it best not to handle any other than the Lawrence L L?

Defendant excepts — this question as leading of witness.

Ans. I understand the question, but I do not know anything about the inside of their business now.

Q. 992. When you are on the road traveling do you meet with any difficulty in trying to sell other L L's than Lawrence L L?

Ans. From my own experience I do not try very hard to sell any other L L.

Q. 993. How are orders received for such goods? Is it not a fact that some orders are received as so many pieces of L L sheeting?

Defendant excepts — this question as leading.

Ans. Yes, sir.

Q. 994. When such orders are received what is it understood to mean?

Ans. I understand it to mean four-yard cotton.

Q. 995. Is that all that comes to your mind when such an order as that is made?

Ans. I could not say as to just what the impression is at the time. We fill the order with Lawrence L L, having no other.

Q. 996. Suppose at the time of receiving the order you had other L L besides Lawrence L L, would you not still suppose the party making the order wanted the Lawrence L L?

Ans. That would be owing to what we had sold to the firm before from whom the order came.

155 —. 997. What would you understand it to mean if from a new customer, and how would you fill it?

Ans. I would understand that he wanted a four-yard cotton. Having no other cotton at the present time, we would send him Lawrence L L; that is all.

T. C. BYRNE.

JOSHUA MOTTER, being sworn, deposes as follows:

Questions by Mr. RAINEY:

Q. 998. What is your name, age, residence, and occupation?

Ans. Joshua Motter; age, 40; St. Joseph, Mo.; wholesale dry goods; one of the firm of Tootle, Hosea & Co.

Q. 999. How long have you been connected with this firm?

Ans. Ten or eleven years.

Q. 1000. What amount of goods are handled by this firm as compared with other jobbing firms in St. Joseph?

Ans. This question I cannot answer intelligently.

Q. 1001. Are you familiar with brown sheeting stamped with trade-mark L L; and, if so, how long have you been familiar with it?

Ans. I am familiar with several brands of L L in the market—Lawrence L L and common brands of L L on the market—and have been familiar with them since I have been in the wholesale business.

Q. 1002. What L L sheetings is your house handling since you have been in business?

Ans. As near as I can remember, Atlantic L L, Aurora L L, and Hyde Park L L.

Q. 1003. The Atlantic L L is not a 4-yard goods—it does

156 not compete with other L L; is that correct?

Ans. Well, my understanding is it is a little cheaper.

Q. 1004. Is the Atlantic L L a 4-yard goods, a 5-yard goods, or a 10-yard goods, or how is it known?

Ans. I could not tell you; I am not clear in the weight.

Q. 1005. By whom and where is the Hyde Park L L made?

Ans. It is made by Mackey & Nisbitt, Evansville, Indiana.

Q. 1006. Is it not a private brand made for your house by this company?

Ans. That is my understanding.

Q. 1007. What significance and meaning is conveyed to you and

the trade with which you are familiar by L L when attached to sheetings?

Ans. Well, I will answer that in this way: If a customer was to order L L muslin from me, saying nothing but L L and giving no further description than that, I would send him Lawrence L L.

Q. 1008. In such a case you would understand it to mean Lawrence L L, would you not?

Defendant excepts to this question as leading.

Question withdrawn by complainant as witness was preparing to answer and said he was ready to answer.

Q. 1009. How would — understand an order for so many pieces of L L sheetings?

Ans. How would I understand an order for so many pieces of L L sheeting? Well, I would understand an order for so many pieces, if the brand was not specified and not fully specified, I would understand it to be Lawrence L L.

Witness did not fully understand the question.

The above question is repeated, and the witness is now
157 asked if he understands the question and what is his answer.

Q. 1009. How would you understand an order for so many pieces of L L sheeting?

Ans. If it was not specified I would understand it to be Lawrence L L.

Q 1010. Do you receive orders for such sheetings simply as L L sheetings—so many pieces of L L sheetings?

Ans. They are rare.

Cross-examination by Mr. DICKINSON:

X Q. 1011. Are not these several sheetings known on the market as Lawrence L L, Hyde Park L L, Atlantic L L, and Aurora L L?

Ans. Yes, sir.

X Q. 1012. Are they not severally billed to you and do you not bill them to the trade severally by the same title?

Ans. Yes, sir.

X Q. 1013. Speaking of what you would understand by an order simply specifying L L, without any other special word or description, are you simply giving what you would understand, or are you undertaking to speak generally of a settled understanding on the trade?

Ans. I am only giving my opinion.

That is all.

JOSHUA MOTTER.

STATE OF MISSOURI, }
County of Buchanan, } ss:

I, D. E. Replogle, a notary public within and for the county of Buchanan and State aforesaid, do certify that the above depositions

were taken before me; both representative for plaintiff and
158 representative of defendant being present, the witnesses were duly sworn; that the depositions were taken by me in short-hand and by me transcribed on the type-writer, the several witnesses being duly sworn by me.

In witness whereof I have hereunto set my hand and affixed my official seal this 26th day of June, A. D. 1886.

DAVID E. REPLOGLE,
Notary Public.

OMAHA, *June* 26, 1886.

Depositions continued. Present: W. G. Rainey for complainant, J. M. Dickinson for defendant, Tennessee Manufacturing Co., and who also appears for Evansville Cotton Manufacturing Co. and Aurora Cotton Mills, as to witness cited in notice, but as to all other witnesses cross-examined, subject to approval of counsel for said defendants; by consent the same to be taken before Wm. J. Martin, a notary public in and for Douglas county, city of Omaha, State of Nebraska.

RICHARD HODD, being first duly sworn, deposes and says:

Questions by W. G. RAINEY:

Q. 1014. State your name, age, residence, and occupation.

Ans. Name, Richard Hodd; age, 31; live at Omaha; and salesman for Tootle, Maul & Co., dry-goods jobbers at Omaha.

Q. 1015. How long have you been in the employ of this firm, and what has been your special duties?

Ans. Seven years; three years of the time as traveling salesman, and four years of the time in the domestic stock.

Q. 1016. What do you mean by "in the domestic stock?"

Ans. Such goods as bleached and brown cottons, denims, chev-
iots——

159 Q. 1017. You have stated above that for four years you have been in the domestic stock; do you mean selling domestics?

Defendant excepts to this question as leading.

Ans. I do.

Q. 1018. During this time, the past seven years, have you been selling brown sheetings known as double L L goods?

Ans. Yes, sir.

Q. 1019. Should a customer ask you for L L sheetings what would you understand him to mean?

Ans. I would understand him to mean a sheeting with L L stamped upon it.

Q. 1020. Would you understand him to have reference to any particular L L sheeting? If so, what?

Ans. I don't understand that.

Q. 1021. Would you understand such a question to refer to any particular L L sheeting made by any particular mill, or manufacturer? If so, what?

Ans. Either Lawrence L L or similar grade of goods.

Q. 1022. Does your house handle and sell any other L L sheeting than the Lawrence L L? If so, what?

Ans. We handle at the present time the Badger State with one big L and the word "double" printed through it.

Q. 1023. Has this house ever handled the Badger State with two L's on it? If so, for how long, if you know?

Ans. Yes, we have, off and on, for six years.

Q. 1024. What do you know about the popularity and demand in the trade for the Lawrence L L?

Ans. It is the most popular L L with our trade.

Q. 1025. Is there any advantage to your house, if so, what, in handling any other L L than the Lawrence?

160 Ans. There is about one to two per cent.

Q. 1026. This being so, your house makes an effort to sell all such other L L's in preference to the Lawrence, does it or not?

Ans. It makes an effort to sell the other L L's that it carries in stock.

Q. 1027. Does your house make any profit in handling the Lawrence L L's or are they handled at a loss; and, if so, how much?

Ans. They are handled at a loss. The freight is the loss, which amounts to over five per cent.

Defendant excepts to the foregoing question and answer as being incompetent and irrelevant.

Q. 1028. Can you give the aggregate loss to your house in handling the Lawrence L L's per annum at the present time?

Defendant excepts to this question as being irrelevant and incompetent.

Ans. About $700.

Q. 1029. Why is it that your house will deal in and handle the Lawrence L L's at such a loss?

Defendant excepts same as last.

Ans. Because our competitors compel us to.

Q. 1030. Please explain what you mean by this last answer.

Ans. I mean the jobbers of Chicago, the jobbers of St. Joe, the jobbers of Kansas City, the jobbers of Sioux City offer Lawrence L L's at such a price that we have to carry it to protect our trade.

Q. 1031. Is it or not a fact that the retail merchants insist on purchasing the Lawrence L L's, and for this reason you are compelled to keep the Lawrence L L's in stock?

Ans. In a great measure they do prefer the Lawrence L L,

161 although there are some who prefer the Badger L L.

Q. 1032. What percentage of Lawrence L L and Badger State L L do you sell?

Ans. Since January 1st, 1886, I think we have put out sixty per cent. of the Lawrence L L against forty per cent. of Badger State L L.

Q. 1033. How was this percentage during 1885, to the best of your knowledge?

Ans. Much larger in favor of Lawrence L L, one reason being that most of that time we carried nothing else but Lawrence L L.

Q. 1034. How was it in 1883 or at any time when you carried them both?

Ans. I can't give the percentage, but the preference was always for Lawrence L L.

Q. 1035. When you were traveling salesman and came in contact on the road with the retail merchants what did they understand L L to mean?

Ans. That is a difficult question to answer, but if we had any other L L in stock besides Lawrence, unless they insisted upon having Lawrence L L, we would send them either the Badger L L or Shawmut L L, to make the loss as little as possible.

Q. 1036. The retail merchants were more familiar with Lawrence L L than with any other L L, were they not?

Defendant excepts to this as leading.

Q. 1037. Question repeated without the witness answering, with the addition of "were they or not?"

Ans. I think most of them were, although a few were not.

Q. 1038. To those who were familiar with Lawrence L L is it or not a fact that you had to use persuasion to induce them to purchase other L L's?

162 Ans. Yes.

Q. 1039. What is your knowledge as to whether the retail merchants know that L L means four-yard goods?

Ans. I don't think that many of them know anything about how many yards to the pound.

Cross-examination:

X Q. 1040. But they all do know that L L designates a certain grade or quality of brown sheetings, do they not?

Ans. I believe they do; the same as they understand a standard letter A.

X Q. 1041. Then L L alone is used and understood generally to mean a certain grade or quality of goods, does it not?

Ans. It does; four-yard goods.

X Q. 1042. These several kinds of L L sheetings are known and designated in the trade as Lawrence L L, Badger State L L, Aurora L L, etc., are they not?

Ans. We sell Lawrence L L as Lawrence L L and Badger State L L as Badger State L L.

X Q. 1043. And they are so known and designated in your trade, are they not?

Ans. We sell and bill them according to the brand printed on the goods.

X Q. 1044. And they are sold and billed to you according to the brand printed on the goods?

Ans. Yes, sir.

Redirect examination:

R. D. Q. 1045. You have stated that L L means four-yard goods. Do you mean to the jobbing trade alone?

Ans. I mean to the man who is posted on brown cottons,
163 whether jobber or retailer, although very few of our customers know anything about four-yard goods.

R. D. Q. 1046. While to the jobbers and those posted L L may convey the meaning of four-yard goods, does it or not, in addition thereto, as a general rule, convey the idea of Lawrence goods?

Ans. Sometimes it does, and sometimes not.

RICHARD HODD.

JAMES J. BROWN, being first duly sworn on oath, deposes and says:

My name is James J. Brown; aged 53. I live at Omaha. I am a retired merchant; have been a merchant at Omaha since 1856; for the past six years have been a jobber; previous to that, for about six years, wholesale and retail merchant, and previous to that a retail merchant.

Q. 1047. State whether during any part of this time, if so, what, you have handled and sold brown sheetings known to the trade as L L sheetings.

Ans. Yes, sir; for ten years; perhaps longer; probably longer.

Q. 1048. What was the first L L sheeting handled and sold by you?

Ans. Well, my recollection is the Lawrence L L.

Q. 1049. How long did you handle the Lawrence L L before you handled any other L L sheeting?

Ans. Ten years or more.

Q. 1050. During this period of time should one have asked you for L L sheetings what would you have supposed he meant?

Ans. My impression is, Lawrence L L.

Q. 1051. So far as your knowledge went, was that the significance attached to L L goods in the trade. I mean, did the trade
164 understand at that time that L L meant Lawrence goods, or did they not so understand it?

Defendant excepts to this question as leading.

Ans. Yes, sir; I should say it did.

Q. 1052. What other L L sheetings have you handled, and for how long?

Ans. Well, I have handled three L L's, exclusive of the Lawrence L L, or, in addition, Badger State L L, Pensacola L L, Beaver Dam L L. Beaver Dam L L, off and on, for the last five years, Badger State L L three years, Pensacola L L two to three years.

Q. 1053. During the period of time you have handled L L goods which has been considered in the trade to be the standard of such goods?

Ans. Well, the Lawrence L L, being the pioneer, would be the one I would recognize as the standard.

Q. 1054. During the past five years, during which time you have handled these other L L's, what proportion of Lawrence L L's or percentage have you sold, and what percentage of other L L's? Give your best estimate.

Defendant objects to this oral statement, as the books are the best evidence.

Ans. Speaking from memory, would say I have sold as many Lawrence L L's as all the other three combined.

Q. 1055. What effect, if any, has the advent of other L L's into the trade had upon the market price of the Lawrence L L's?

Ans. I am not in a position to intelligently answer that question.

Q. 1056. During the past two or three years have you made or lost any money in handling the Lawrence L L's?

165 Plaintiff objects to this as incompetent and irrelevant.

Ans. I have lost money.

Q. 1057. Why have you handled them if you lost money at them?

Ans. To protect my trade as against prices offered by other jobbers.

Q. 1058. Is it or not a fact that one reason is because the trade demanded the Lawrence L L's, and to meet this demand you kept them in stock?

Defendant excepts to this as leading.

Ans. Yes, sir.

Q. 1059. During the last five years, when receiving an order for L L's or Lawrence L L's, how have you filled them?

Defendant excepts to this as irrelevant and incompetent.

Ans. When out of Lawrence L L's I have substituted Badger State and Beaver Dam.

Cross-examination:

X Q. 1060. These several brands were known and designated in the trade with which you were acquainted as Lawrence L L's, Beaver Dam L L's, and Badger State L L's, respectively, were they not?

Ans. All branded so; yes, I suppose so.

X Q. 1061. At the time you were handling all three your understanding of an order simply designating L L with no other accompanying name would depend somewhat upon the customer sending the order and the particular brand of L L which he had been buying of you, would it not?

Ans. If he had bought either of the L L's previously, of the three brands, exclusive of Lawrence L L's, then I would fill with either Badger State or Beaver Dam.

166 X Q. 1062. These several brands were invoiced to you as Lawrence L L, Beaver Dam L L, and Badger State L L, respectively, were they not?

Ans. Yes, sir; I think so; always.

X Q. 1063. And you so invoiced them to your customers, did you not?

Ans. As a rule, yes; might be exceptions.

X Q. 1064. In speaking of your understanding of the meaning of L L at the time when you handle no other L L but the Lawrence brand, do you undertake to say that the trade generally regarded its meaning as you did, or do you only speak of your personal understanding and the trade to which you sold Lawrence goods?

Ans. And to the trade to which I sold, and my personal understanding.

Redirect examination:

R. D. Q. 1065. So far as your knowledge goes, as a rule, does the retail merchant know that L L, when used with reference to brown sheeting, has reference to its weight?

Ans. Some do, but I don't believe the majority do.

Recross-examination:

Re-X Q. 1066. But they do know that it indicates a certain grade of quality of brown sheeting, do they not?

Ans. Yes, sir.

JAMES J. BROWN.

E. A. HOUGHTON, being first duly sworn, on oath deposes and says:

My name is E. A. Houghton; aged 30; residence, Omaha; occupation, wholesale dry goods and a member of the firm of M. E. Smith & Co., now of Omaha, formerly of Council Bluffs, under its
167 present firm name, and under the firm name of Smith & Crettenden. I have been a member of the firm of M. E. Smith & Co. for one year and a half, and have been with the above two firms for eleven years. I have at present a general charge of all the goods in the house. I had charge of and sold goods in the domestic department of said firm for six years.

Q. 1067. During these eleven years you have been with said firm have they been selling 4-yard goods, or brown domestics, stamped with the trade-mark L L?

Defendant excepts to so much of the foregoing question as asserts as a fact that there is such a trade-mark as L L.

Ans. Yes, sir.

Q. 1068. How were such brown sheetings otherwise designated that you first handled stamped with L L?

Ans. The first sheetings that I remember of that were stamped L L were the Lawrence.

Q. 1069. Do you remember for how long these firms have handled such L L sheetings stamped with Lawrence?

Ans. Ever since I have been in the house.

Q. 1070. Have either of these firms handled any other sheetings

than the Lawrence stamped with L L? If so, state for how long and give the names of such sheetings.

(Defendant excepts to so much of said question and answer thereto as refers to any brown sheetings other than those made by defendants.)

Ans. They have handled other brands about six years. Baltic L L, made by the Appleton Mills; Badger State L L, at Janesville, Wisconsin; Hoosier L L, at Evansville, Indiana; the Lancaster L L is made by the same mill as the Hoosier, but branded Lancaster for our special benefit.

Q. 1071. During these eleven years should a customer have given you an order or inquired of you for L L sheetings what
168 would you understand him to mean?

Ans. Lawrence L L.

Q. 1072. During the past six years what percentage of Lawrence L L have you sold and what percentage of other L L's?

Ans. I should say ten or twelve Lawrence to one of the others.

Q. 1073. Has your firm made any special efforts to sell to the trade these other L L's in preference to or in lieu of the Lawrence?

Ans. They have.

Q. 1074. During the past few years has or not your firm sold the Lawrence L L's at a loss; and if at a loss, at about how much per annum?

Ans. They have always been sold at a loss. Our loss in cents is from $\frac{1}{4}$ to $\frac{1}{2}$ a cent per yard, which amounts to from $3.00 to $6.00 per bale. The average number of bales we handle per year is about 175, each bale containing about 1,200 yards.

Q. 1075. If your firm has handled Lawrence L L's at such a loss, why is it that you keep them in stock?

Ans. Because it is absolutely necessary to supply the demands of the trade.

Q. 1076. During the past five or six years has your firm ever filled an order for L L or Lawrence L L sheeting with any of these L L's you have mentioned?

Ans. Only in case of the Lawrence L L being out of stock at the time.

Q. 1077. What knowledge have you whether the retail merchant understands L L to have any reference to the weight of such sheetings?

Ans. I don't think he has any knowledge, only that derived from the brand on the sheeting. I mean he doesn't buy sheet-
169 ings according to the weight.

Cross-examination:

X Q. 1078. The letters L L do indicate a certain grade or quality of brown sheeting, up to which grade or quality all of the L L's named by you are understood to come, do they not?

Ans. Yes, sir.

X Q. 1079. The retailers, without having in their minds the special fact that these goods run four yards to the pound, yet under-

stand perfectly that the letters L L indicate and are used to designate a certain grade or quality of brown sheetings, do they not?

Ans. They do, but a small portion of the trade only understand that they are 4-yard goods.

X Q. 1080. These several brands are known and designated generally in the trade and by the purchasers as Lawrence L L, Lancaster L L, Hoosier State L L, Badger State L L, and Baltic L L?

Ans. They are.

X Q. 1081. Those purchased and sold by you were invoiced to you and by you to your customers as Lawrence L L, Baltic L L, Lancaster L L, etc., were they not?

Ans. They were.

X Q. 1082. Did you, in selling these other L L goods, directly or impliedly seek to make the impression on your purchasers that they were the same goods as the Lawrence L L, and that they were made by the same mill?

Ans. We called all L L goods the same quality, but never said they come from the same mill.

X Q. 1083. Did not your customers fully understand that they were not from the same maker?

Ans. They did.

170 X Q. 1084. Then you, so far as you know, did not deceive any purchaser in selling the other L L, and have them buy under the impression that they were really getting the Lawrence L L goods?

Ans. Never did that.

X Q. 1085. Are not the other words and symbols on those other L L brands different in appearance, with the exception of the L L, from the brand on the Lawrence L L goods?

Ans. They are.

X Q. 1086. The appearance of each of the brands is wholly dissimilar from that on the Lawrence goods, is it not, with the exception of the L L?

Ans. They are.

X Q. 1087. Is not your impression of what L L meant, taken alone, rather your own individual opinion, produced from the fact that for a long time you handled and were familiar with the Lawrence L L before you knew any other?

Ans. No, sir; L L meant with me a certain quality of brown sheetings only.

X Q. 1088. And that was the quality or grade which among you jobbers is understood to be four-yard goods; is not that true?

Ans. Yes, sir.

X Q. 1089. Now, as a matter of fact, can you now recall any instance of an order for L L sheetings not accompanied by the words Lawrence or some other name?

Ans. We have had a few such orders for L L sheeting.

X Q 1090. They have been exceptional, have they not?

Ans. They have.

X Q. 1091. Since you have had experience in the trade have not

generally the orders been for Lawrence L L, or Baltic L L, or Lancaster L L, etc.?

171 Ans. They have.

X Q. 1092. You know a sheeting in the trade designated Atlantic L L, do you not; and, if so, how long have you known it?

Ans. The first few years we had Atlantic L L, but since that not.

X Q. 1093. At that time you had Lawrence L L also.

Ans. Yes, sir; I think we did, and I am positive we did.

X Q. 1094. The Atlantic was a lighter goods; about a five-yard goods, was it not?

Ans. I couldn't say, as I was merely a porter in the house at the time and not familiar with the quality of the goods, only the brand.

X Q. 1095. You then distinguished and spoke of them as Lawrence L L and Atlantic L L, did you not?

Ans. Yes, sir.

Redirect examination:

R. D. Q. 1096. While L L may mean four yards to the pound, does it not also mean to your mind primarily and to the trade goods made by the Lawrence Manufacturing Co.?

Ans. I should consider it would mean goods manufactured by the Lawrence Co. for the reason it was the only brand of L L sheeting known to me for some years before the others appeared.

Recross-examination:

Re-X Q. 1097. You only speak of your own impression individually, do you not?

Ans. I speak for myself and a certain class of my customers.

Re-X Q. 1098. That is the class which you know to be more familiar with the Lawrence goods, is it not?

172 Ans. Yes, sir.

Re-X Q. 1099. Now, you do not understand that L L on the Baltic goods and Lancaster goods means that they are made by the Lawrence Mills, do you?

Ans. No, sir.

Re-X Q. 1100. You only mean that L L, taken in connection with the brand of the bull's head and the words Lawrence Mills, mean that the goods are made by the Lawrence Co.; is that not true?

Ans. Yes, sir.

E. A. HOUGHTON.

STATE OF NEBRASKA, *County of Douglas,* } ss:

I do hereby certify that the foregoing depositions were taken by me and that the witnesses whose names are signed to the same, viz., James J. Brown and Richard Hodd and E. A. Houghton, were each by me first solemnly sworn to testify the truth, the whole truth, and nothing but the truth in said cause, and that each signed his deposition in my presence.

In witness whereof I have hereunto set my hand and notarial seal this 26th day of June, 1886.

W. J. MARTIN,
Notary Public.

COUNCIL BLUFFS, IOWA, *June 28th*, 1886.

Met pursuant to adjournment from Omaha, Neb.

Present: Same parties as before; witnesses being sworn before examination by N. Schurz, justice of the peace in and for Pottawatomie county, Iowa.

E. E. HARNESS, being first duly sworn on oath, deposes and says:

My name is E. E. Harkness; aged, 43 years; residence, Coun-
173 cil Bluffs, Iowa; occupation, chiefly retail dry-goods merchant. have been a merchant at Council Bluffs for twelve years, with the firms of Smith & Harkness, Harkness, Orcutt & Co., and at present Harkness Bros.

Q. 1101. Please state whether during these twelve years these several firms with which you have been connected have held and sold to the consuming trade heavy brown muslins or sheetings stamped with the letters L L; and, if so, how are they otherwise designated?

Ans. We have, and designated Lawrence.

Q. 1102. Up to and within the past year, should any one ask you whether you had any L L sheetings what would you understand such a one to inquire about?

Defendant excepts to this question as asking for a mere supposition of witness, based upon a hypothetical case not proven.

Ans. I should understand they wanted sheetings with L L stamped upon it.

Q. 1103. Has this symbol of L L any significance to you and to your trade, having reference to the weight of such goods?

Ans. No; I think not. I think the inquiry of the trade has reference to the letters.

Q. 1104. At any time during these twelve years should any one make the inquiry supposed in the second question above what particular brand, if any, of such goods would you understand him to refer to?

This question excepted to because substantially the same question has been asked the witness and answered by him.

Ans. I wouldn't know.

Q. 1105. Last question repeated, as it is evident the witness did not fully comprehend it.

Defendant excepts to this question on the ground that the
174 witness has answered the question and has said nothing to the effect that he did not understand it.

Ans. I make the same reply.

Q. 1106. What kind of sheetings branded L L have you had during these past twelve years?

Ans. Lawrence L L, and I think others, but I could not say what.

Q. 1107. Have you had other L L's than the Lawrence during this whole period of twelve years; if not, during what part of it?

Ans. To the first part of the question, no; to the next part, during the last two years.

Q. 1108. Up to the last two years should any one ask you for L L sheetings what would you understand him to mean?

Ans. With our trade we would understand him to mean Lawrence L L.

Q. 1109. Who purchases such goods for your house?

Ans. I do.

Q. 1110. Do you remember to have purchased any other L L than the Lawrence?

Ans. I do not.

Cross-examination:

X Q. 1111. Have you ever handled the Atlantic L L?

Ans. I don't think we have.

X Q. 1112. You have for many years known of it as a brown sheeting in the trade, have you not?

Ans. I think so.

X Q. 1113. It has been known and called by the name of Atlantic L L, has it not?

Ans. I think so.

175 X Q. 1114. The Lawrence L L sheetings are billed or invoiced to you by the name of Lawrence L L, are they not?

Ans. Sometimes. I could not swear that they always are.

X Q. 1115. That is the name by which you have known and heard them designated generally by the trade, is it not?

Ans. Yes.

E. E. HARKNESS.

SIMON EISEMAN, being first duly sworn, on oath deposes and says:

My name is Simon Eiseman; aged nearly forty years; reside at Council Bluffs; am in the wholesale and retail dry-goods business of the firm of Henry Eiseman & Co.; have been a member of this firm for twelve years.

Q. 1116. State whether, during those twelve years, your firm has handled and sold brown sheetings stamped with the letters L L.

Ans. We have.

Q. 1117. What signification or meaning have these letters L L to you and to your trade when applied to brown sheetings?

Ans. Well, it denotes the quality of the sheeting—*i. e.*, when they are stamped Lawrence L L we take it to be a certain standard of sheeting, as good a value as we can get for a certain priced goods, and we advertise it as such.

Q. 1118. Do your customers, when wanting brown sheetings, ever inquire for them as L L sheetings?

Ans. It has been the case.

Q. 1119. In such cases what do you understand them to mean or want?

Ans. The Lawrence L L.

Q. 1120. To what extent do you handle Lawrence L L
176 sheeting?

Ans. From one to four bales per week at times, just as the demand for it; we might say from one to five thousand yards per week.

Q. 1121. Do you know anything about the weight of such sheetings?

Ans. Not without comparing them.

Q. 1122. Does the consumer know anything about the weight of such sheetings, as far as you know?

Ans. I think not.

Q. 1123. Please give us your opinion whether the ordinary consumer, in seeing L L or double L stamped on sheetings belonging to the same class as the Lawrence L L, would likely be deceived in supposing them to be Lawrence L L?

Defendant excepts to this as calling for opinion and not a question of fact within the knowledge of witness.

Ans. Such might be the case.

Q. 1124. Why?

Ans. They may by L L being on the sheeting; some people might think it to be the Lawrence L L; the salesman might make them believe so.

Q. 1125. Then, if I understand you correctly, it is your opinion that the stamping of double L or L L on sheeting on the same class as the Lawrence L L would have a tendency to deceive the general public; am I correct or not in this understanding?

Defendant excepts to this question as leading in that the witness meant to speak of the general public, when he has only spoken of a case that might possibly arise.

Ans. That might be the case.

177 Cross-examination:

X Q. 1126. You have known for a long time that there has been in the trade a brown sheeting stamped Atlantic L L, have you not?

Ans. Yes, sir.

X Q. 1127. The L L on this sheeting are like the L L on the Lawrence sheeting, are they not?

Ans. Similar.

X Q. 1128. Then would not persons who might be deceived by L L being stamped on sheeting and who look to the L L and not to the name of the maker be also deceived under the same circumstances and think that the Atlantic L L and the Lawrence L L were made by the same maker?

Ans. That may be the case.

X Q. 1129. It is just as likely to happen as between these two

brands as it would between the Lawrence and any other L L brand of brown sheeting, would it not?

Ans. Yes, sir.

X Q. 1130. The Lawrence L L brown sheetings are known and distinguished in the trade as Lawrence L L, are they not?

Ans. Yes, sir.

X Q. 1131. And the other L L brown sheetings with which you are familiar are known generally with the public and distinguished as Aurora L L, Badger State L L, etc., are they not?

Ans. Generally to the trade.

X Q. 1132. Is not L L generally understood to mean, when put on brown sheeting, that the goods is of a certain quality or grade of standard sheetings as distinguished from other grades of standard sheetings?

Ans. I don't understand it that way, exactly.

X Q. 1133. Do you not know that most, if not all, of the
178 L L sheetings known in the trade, except the Atlantic, all purport to be up to the same general standard of grade or quality?

Ans. I didn't know that exactly that way.

X Q. 1134. With what L L goods other than the Lawrence have you been familiar with in your trade?

Ans. I can't give all the names exactly, but very few. We have handled the Lawrence L L principally for that grade of goods.

X Q. 1135. Then that is about the only L L goods of that grade with which you in your trade have had any familiarity?

Ans. Principally.

X Q. 1136. If you have handled any other L L's of that grade, state the names and the periods during which you have handled them.

Ans. We have handled the Auroras and we have handled the Atlantics; that is all I can remember; there may be others.

X Q. 1137. Have you ever handled either or both of these contemporaneously with the Lawrence L L?

Ans. What do you mean by that—do you mean the same time?

X Q. 1138. I do. Please answer.

Ans. We have.

X Q. 1139. Now, did you not distinguish them in your trade as Lawrence L L, Atlantic L L, and Aurora L L?

Ans. Certainly.

X Q. 1140. Suppose you should have received an order from a customer who had purchased from you the Lawrence L L and one or both of the other brands, would he not in renewing an order of L L sheeting designate which he wanted, as, for instance, Lawrence L L, Atlantic L L, or Aurora L L?

179 Ans. I should think he would.

X Q. 1141. As a matter of fact, so far as you can remember, was it not the usual habit for your customers in ordering Lawrence L L to designate them as Lawrence L L?

Ans. Why, certainly.

X Q. 1142. If any customer ever ordered L L sheetings simply,

without adding the name of the maker, it was a very rare occurrence, was it not?

Ans. It has happened, but not frequently.

X Q. 1143. The custom was the other way?

Ans. Among the trade.

X Q. 1144. If a person had been in the habit of buying Atlantic L L alone, or Aurora L L alone, of you, and should make an order for L L only, you would understand that he meant the L L brand that he had been getting of you, would you not?

Ans. I should look at the kind he had had before and would send him the same thing.

X Q. 1145. Then L L would not necessarily imply to your mind that the customer meant Lawrence make, but your understanding would depend largely upon the character of his previous purchases of you, would it not?

Ans. Well, certainly, we would consult his previous purchases.

X Q. 1146. In giving your understanding of the significance of the letters L L, is it not your individual understanding which you expressed as produced by your experience in your own business and with your own trade?

Ans. Well, I have very little experience in L L brands outside of the Lawrence L L's.

X Q. 1147. Your opinion is that which you hold individually, is it not, as based on this experience?

180 Ans. Yes, sir.

X Q. 1148. You have not undertaken to speak of any general understanding in the trade, outside of your own business, or to give the opinions you have expressed as the settled conclusion of the trade in general?

Ans. I have expressed my opinion in my business experience by taking a business view of it, together with my business experience.

X Q. 1149. Then you merely state your opinion and do not swear that the opinions held by you are those held by the trade in general in these goods outside of your own trade?

Ans. I can't swear to the opinion of others.

X Q. 1150. Do you claim to know what the views of the trade in general, outside of your own trade, is on the matters as to which you have testified—in short, are you speaking for yourself alone or for the public generally, who are familiar with and engage in those matters?

Ans. I can only speak for myself; I can't speak for others.

Redirect examination:

R. D. Q. 1151. Do you know that the Atlantic L L are of a lighter grade and do not come into competition with the Lawrence L L's?

Ans. It is a lighter grade. I don't know anything about the competition.

R. D. Q. 1152. In your answer to cross-question 1139 you have stated in substance that other L L's than the Lawrence are known generally to the trade as Aurora L L, Badger State L L, etc. What

do you mean by "to the trade" in this answer; between the retailer and the jobber or the retailer and the consumer?

Ans. Between the retailer and jobber or manufacturer.

181 R. D. Q. 1153. Should you receive an order for L L sheetings from a customer that had not purchased any L L's from you what L L's would you suppose he wished?

Ans. I would send him the Lawrence L L.

Recross-examination:

Re-X Q. 1154. If you had the Atlantic L L why would not that possibly be what the customer wanted?

Ans. It may be that, too.

SIMON EISEMAN.

STATE OF IOWA, }
County of Pottawattamie, } ss:

The above two witnesses, E. E. Harkness and Simon Eiseman, were first duly sworn by me and subscribed the foregoing deposition in your presence.

N. SCHURZ,
Justice of the Peace.

COUNCIL BLUFFS, IOWA, *June* 28, 1886.

It is stipulated and agreed that if William Gronewag was duly sworn and examined in these cases he would swear as follows:

That he was a grocer merchant at Council Bluffs, Iowa; that on the 26th day of June, 1886, he received a letter from John Pointer, of Topouis, Idaho, dated June 23d, and in said letter there was an order, among other things, for "two pieces of L L muslin;" that he, the said Gronewag, did not know what it meant, and, upon inquiry of Mr. John Beno, of John Beno & Co., a retail dry-goods merchant at Council Bluffs, he was informed by said Beno that he understood it to mean Lawrence L L sheetings.

That said Gronewag would further state that upon inquiry of Mr. Charles Cook, of Council Bluffs, who is also a dry-goods merchant, that he, the said Cook, understood it to mean Lawrence L L sheetings.

182 This stipulation being made, however, so far as concerns the two cases against the Aurora Cotton Mills and the Evansville Cotton Manufacturing Co., subject to the approval of A. J. Hopkins and D. C. Givens, the solicitors of said defendants, and subject also to exceptions by all the defendants for irrelevancy and incompetency.

W. G. RAINEY,
For Lawrence M'f'g Co.
J. M. DICKINSON,
For Tennessee M'f'g Co.

It is further stipulated that if John Beno were sworn and examined he would testify on direct examination as follows:

That he is a retail dry-goods merchant at Council Bluffs, Iowa, and has been for the past twelve years; that he has handled during this time brown sheetings known as Lawrence L L; that were a customer to inquire of him for L L sheetings he would understand him to mean and would show him Lawrence L L; that to him it has no meaning as having reference to the weight of such goods; that to-day, June 28th, 1886, he was inquired of by William Groenewag for L L muslins, and understood it to mean Lawrence L L sheetings.

Defendant excepts to what passed between him and Groeneweg as irrelevant and incompetent.

And that upon cross-examination he would testify as follows:

Witness has sold no other goods branded L L than the Lawrence make, and this impression or understanding of his is derived from his familiarity with this particular brand. These goods are billed to him "Lawrence L L sheetings." They are generally known in the trade as "Lawrence L L sheetings." While witness knows nothing as to the weight, he understands that the letters L L do indicate a particular grade or quality of brown sheeting, as distinguished from other standard grades of brown sheeting.

W. G. RAINEY,
For Complainants.
J. M. DICKINSON,
Solicitor for Tennessee M'f'g Co., and also for Other Defendants, Subject to Adoption or Rejection by their Several Solicitors.

183 CHARLES C. COOKE, being first duly sworn, on oath deposes and says:

My name is Charles C. Cooke; my age is 31; my place of residence is Council Bluffs, Iowa; and my occupation is a general commission and storage business since November, 1884, and also am interested in a retail dry-goods establishment in Danbury, Woodbury county, Iowa. For ten years previous to January, 1885, I was employed by Smith & Crittenden, jobbers in dry goods, at Council Bluffs, Iowa.

Q. 1155. Please state whether for the past eleven years you have been familiar with brown sheeting stamped with the letters L L.

Ans. I have been familiar with those brands for the past eleven years.

Q. 1156. To you and the trade with which you have been familiar what meaning is conveyed by L L, or double L, when the same is applied to brown sheeting?

Ans. Well, we would consider it the Lawrence L L, as that is the widest-known brand in this section of the country.

Q. 1157. Were one to inquire of you concerning L L sheetings what would you understand him to mean?

Ans. Well, I would understand him to mean 4-4 or a yard-wide sheeting.

Q. 1158. Would such an inquiry to you and the trade have any further significance than what you have already indicated; if so, what?

Ans. Why, I think it would signify, if it was a man well posted, that he meant a Lawrence L L, and to one who is not well posted I would think so because of the popularity of the brand.

Q. 1159. While with Crittenden & Smith what were your particular duties?

Ans. I was on the road for them selling goods for eight years, and I had charge of the domestic department after that as a
184 salesman, not as a buyer.

Q. 1160. As such a salesman and traveling agent what part of the trade did you become most familiar with?

Ans. Well, I was more familiar with the Iowa retail merchant trade.

Q. 1161. So far as your knowledge and acquaintance went, what significance was attached to L L among the retail trade with which you came into contact?

Ans. Well, the Lawrence L L sheeting to us was one of the necessities; we had other brands of L L muslin, and when out of the Lawrence L L often substituted other brands for the Lawrence, and were often found fault with for it.

Q. 1162. While in the employ of Crittenden & Smith, state whether or not you ever received orders for such muslin or sheetings as L L sheetings.

Ans. I never received them myself, but the house often received them, and they were passed through my hands, as I had charge of the filling of orders through other salesmen.

Q. 1163. How were such orders understood?

Ans. Why, we certainly would put in Lawrence L L if we had it.

Q. 1164. You mean, then, if I understand your answer, such an order meant Lawrence L L; am I or not correct?

Objected to as leading.

Ans. Yes, sir; you are correct.

Q. 1165. How were such orders filled?

This question excepted to as having been already asked and answered.

Ans. They were filled with Lawrence L L if we had it.

Q. 1166. Did you or not understand at the time, and was
185 it or not understood by your house, that such an order called for Lawrence L L sheetings?

Ans. My understanding would be that it was a Lawrence L L. What the house's understanding would be I can't say; when we knew or I knew to a certainty that parties preferred another brand of L L we put it in.

Q. 1167. So far as your knowledge went, did the retail trade under-

stand that L L had any reference to the number of yards to the pound?

Ans. Why, I suppose the right bright merchant knew what it weighed, but there were lots who didn't.

Q. 1168. Would you or not give it as your opinion that comparatively few of the retail merchants had any knowledge on this point?

Ans. That is a pretty hard question for me to answer. I would not like to come out and tell a man that he did not know his business.

Q. 1169. What is your opinion on this subject as to the percentage of retail merchants who had knowledge on this subject?

Ans. My opinion would be that if you were to ask four three would tell you they didn't know what it did weigh.

Q. 1170. Then, in your opinion, three out of every four retail merchants know of such goods as simply L L sheetings; is this correct or not?

Excepted to as leading.

Ans. Correct.

Q. 1171. Have you recently, and, if so, when, had an inquiry about L L sheetings, and from whom?

So much of said question and answer as relates to any transaction transpiring after the bringing of this suit is excepted to
186 as being irrelevant and incompetent.

Ans. Yes, sir; we had an inquiry this morning; well, Mr. Groneweg, of Groneweg & Schoentgen, inquired of me.

Q. 1172. What was his inquiry?

Excepted to as irrelevant and incompetent.

Ans. He had an order from a customer which read, "two pieces L L muslin," and he, knowing I had been in the dry-goods business, inquired what it meant, and I told him it meant Lawrence L L.

Cross-examination:

X Q. 1173. You so replied because you were more familiar with Lawrence L L than any other L L sheeting, did you not?

Ans. No, sir.

X Q. 1174. When you were in business with Smith & Crittenden—*i. e.*, in their employ, you handled and sold to their trade Atlantic L L sheeting, did you not?

Ans. I can't remember that I did. I presume more than likely I have.

X Q. 1175. You know very well that there is and has for a long time been sold in this trade, of which you have spoken, a brown sheeting branded Atlantic L L, do you not?

Ans. I know there is such a brand. Well, it was never popular in our trade; we never handled the quantity of it we did of the other.

X Q. 1176. I did not ask as to popularity or quantity sold, but

asked if you do not know that such a brand has for many years been sold in the trade and custom tributary to Council Bluffs?

Ans. I know there is such a brand, but I cannot speak further than as to our own trade.

X Q. —. Then, in all you have said in your direct exami-
187 nation, you have only spoken as to the understanding in the particular trade of your house and not generally of the public and its understanding in respect to L L goods?

Ans. Why, I suppose there are larger houses than ours, that carry a more varied line of those goods, but my recollection of it is that we didn't carry great quantities of other sheetings of the same weight. As to the question, my answer is "that is all"—*i. e.*, I only speak of my own opinion, based on our trade, and not of the general public outside of our trade. By our trade I mean the trade of our house.

X Q. 1178. Might not the order that Mr. Groneweg spoke of may have meant Atlantic L L muslin?

Ans. It might mean anything, but one acquainted with the dry-goods trade would not so interpret it.

X Q. 1179. The Lawrence goods are called Lawrence L L, and Atlantic called Atlantic L L; is not that true?

Ans. I believe it is.

X Q. 1180. Suppose that order came from one who had been using Atlantic L L and not Lawrence L L; then is it not most probable that the writer meant Atlantic L L?

Ans. If I knew for a certainty that he preferred Atlantic L L, I would put it in; otherwise I would put in Lawrence.

X Q. 1181. Now, please answer the question just asked you.

Ans. Yes; it is most probable that he did.

X Q. 1182. With what L L brands beside the Lawrence and Atlantic have you been familiar with in the trade of which you speak?

Ans. Baltic L L, Badger L L; those two, I guess, is all I remember and am the most familiar with.

X Q. 1183. Were not the Lawrence L L, the Baltic L L, and the Badger L L known in the trade and buyers, so far as you know, by the names Lawrence L L, Baltic L L, and Badger State L L?

188 Ans. Yes, sir; they were.

X Q. 1184. It was well known to your trade, so far as you know, that they were manufactured by different makers than the Lawrence L L, and were not the identical goods with the Lawrence L L—*i. e.*, of the same make?

Ans. Yes, sir.

X Q. 1185. They were severally billed as Lawrence L L, Badger State L L, and Baltic L L, were they not?

Ans. We billed them out by their right names—that is, the names branded on the muslin.

X Q. 1186. Now, you have spoken of orders received specifying only L L and not the particular brand. Now, were not such orders exceptional, and, as a rule, were not the orders for Lawrence L L, if that goods was wanted by the purchaser?

Ans. Well, we would interpret such an order to mean L L sheetings of either brand named, Baltic, Badger, or Lawrence, although it wouldn't be anything unusual to receive an order simply reading L L.

X Q. 1187. You say you would interpret such an order to mean Baltic, Badger, or Lawrence. Now, do you mean by "order" in this connection simply an order for L L sheeting?

Ans. I mean an order for that grade of sheeting.

X Q. 1188. Do you mean that an order of L L sheeting, without specifying any particular brand, means an order for the grade of sheeting which jobbers call four-yard sheetings—*i. e.*, four yards to the pound?

Ans. I would interpret such an order to mean Lawrence L L or that grade of goods.

X Q. 1189. That is to say, either Lawrence L L or Baltic L L or Badger State L L. Is that correct?

Ans. I would think it would mean Lawrence L L or its equal.

189 X Q. 1190. Then L L, you understand, indicates a grade or quality of goods the same as the Lawrence L L?

Ans. Yes, sir.

X Q. 1190½. This grade is known to you as four-yard sheeting?

Ans. Yes, sir; four yards to the pound.

Redirect examination:

R. D. Q. 1191. While L L may have as part of its significance or meaning—of representing brown sheetings of four yards to the pound, yet is it or not a fact that it means primarily more—*i. e.*, goods made by the Lawrence Manufacturing Co.?

Excepted to as leading.

Ans. I couldn't say that it does.

R. D. Q. 1192. Does it or not mean to you goods made by this Lawrence Manufacturing Co., known as the Lawrence L L?

Ans. It does.

R. D. Q. 1193. And also has the same meaning to the trade with which you were familiar?

Ans. Yes, sir.

R. D. Q. 1194. Do you or not know that the Atlantic L L is a lighter goods than the Lawrence L L?

Ans. I only know that they are purported to be of the same weight.

Recross-examination:

Re-X Q. 1195. Does L L stamped on goods branded Atlantic Mills convey to your mind that those goods are made by the Lawrence Mills?

Ans. No, sir.

Re-X Q. 1196. Does L L stamped on goods branded Badger

190 State convey to your mind that those goods are made by the Lawrence Mills?

Ans. No, sir.

Re-X Q. 1197. Does L L stamped on goods branded with the word Baltic convey to your mind that those goods are made by the Lawrence Mills?

Ans. No, sir.

Re-X Q. 1198. Then is not the fact this way, viz: That your understanding that L L stamped on goods means that they are made by the Lawrence Mills in this way when the goods on which they are stamped is also branded Lawrence Mills?

Ans. My understanding is that they would be branded Lawrence L L.

C. C. COOK.

STATE OF IOWA, *Pottawattamie County,* } ss:

The above witness, C. C. Cook, was first duly sworn by me and subscribed the foregoing deposition in my presence.

N. SCHURZ,
Justice of the Peace.

These depositions were all taken by me this 28th day of June, 1886.

W. J. MARTIN,
Notary Public, Douglas Co., Neb.

My fees, $15.00; justice's fees, $2.00; paid by plaintiff.

W. J. MARTIN.

Depositions taken by consent at Winona, Minnesota, on this 30th day of June, 1886, before Frank L. Randall, notary public in
191 and for Winona county and State of Minnesota, all formalities being waived.

W. G. Rainey, Esq., appearing for complainant.

J. M. Dickinson appearing for Tennessee M'f'g Co. and also for Aurora Cotton Mills and Evansville Cotton M'f'g Co.

The cross-examination of witnesses not named in notice subject to the approval of the solicitors of the last two named companies.

E. WILLIAMS, being first duly sworn, deposes as follows:

My name is E. Williams; I am 37 years of age; I live at Winona, Minn; I am in the dry-goods business; have been in the employment of H. Choate, of Winona, Minn., for seventeen years; Mr. Choate is a retailer and jobber of dry goods; have had charge of the jobbing department of this house for about ten years.; for seven years prior thereto was in the retail department.

Q. 1199. State whether during this period of time your house has handled and sold brown sheetings stamped L L.

Ans. Yes, sir.

Q. 1200. What significance has this symbol or L L to you and to the trade with which you are familiar?

Ans. We take them as four-yard goods. They are known to the trade as four-yard goods, and goods as the Lawrence L L's.

Q. 1201. In the expression known to the trade, in your last answer, what do you mean by the trade?

Ans. The retail buyers.

Q. 1202. What section of the country does your trade reach?

Ans. Part of Minnesota, Wisconsin, and Dakota.

Q. 1203. What other L L's, if any, has your house sold besides the Lawrence L L?

192 Ans. Badger State L L's, Beaver Dam L L's, King Hill, and Island Park; the last two are made by the Aurora, I think the name of the Aurora M'f'g Co., and stamped King Hill L L's and Island Park L L's, being private brands of Mr. Choate.

Q. 1204. Since your house has been handling these L L's do you continue to handle and sell Lawrence L L?

Ans. No, sir.

Q. 1205. Do you or not ever receive orders for such brown sheetings as for so many pieces of Lawrence L L?

Ans. We have.

Q. 1206. How are such orders filled?

Ans. If we had Lawrence L L in stock we'd send them, and if we didn't we'd substitute Beaver Dam or any other brand of that grade that we had in stock.

Q. 1207. Have you ever received orders for such goods for so many pieces of L L sheetings or L L muslins?

Defendant excepts to so much of said question and answer thereto as respects the wording or contents of any written orders, the orders themselves being the best evidence.

Ans. I don't think we have.

Q. 1208. Have you or not had any difficulty with the trade in persuading the merchants in handling these other L L's, in lieu of the Lawrence L L?

Ans. Yes, sir.

Q. 1209. To what do you attribute this difficulty?

Defendant excepts to this question as calling for the opinion of the witness and not for a statement of facts, and there being no hypothetical case submitted to the witness for his opinion as an expert.

Ans. Well, the merchants had been in the habit of using the Lawrence, and they didn't want to change.

193 Cross-examination:

X Q. 1210. You have handled and sold for your house for a number of years a brown sheeting branded Atlantic Mills L L, have you not?

Ans. Yes, sir.

X Q. 1211. This, I believe, is a somewhat lighter goods than the Lawrence L L?

Ans. Yes, sir.

X Q. 1212. Do you know the weight?

Ans. No, sir; I do not.

X Q. 1213. The Atlantic L L sheeting is and has always been known in the trade and designated, so far as you know, by the style Atlantic L L, has it not?

Ans. Yes, sir.

X Q. 1214. And the Lawrence L L sheeting has always been known in the trade and has been designated, so far as you know, by the style Lawrence L L, has it not?

Ans. Yes, sir.

X Q. 1215. The Lawrence has been billed to your house and billed out of your house generally by the name Lawrence L L. Is this true or not?

Ans. Yes, sir; it is true.

X Q. 1216. Do not you and your trade, so far as you know, understand the letters L L alone, not connected with any such words as Lawrence, Badger State, or Beaver Dam, etc., to mean simply that the goods on which they are stamped is of the grade or quality known as four-yard goods?

Ans. I don't think that the trade outside of the jobbers understand four-yard goods generally. That's what I mean—generally.

194 X Q. 1217. I did not ask for what the trade generally understood outside of the jobbers, but I asked for your understanding and that of your trade—that is, of your house. Now, please answer the question thus defined.

Ans. Well, our house would understand that L L goods meant 4-yard goods, but our trade know them only as L L's.

X Q. 1218. If your trade and the trade generally are ignorant as to the 4-yard weight, yet they do know that the letters L L are used to indicate a certain grade of standard sheeting as distinguished from other standard grades, do they not?

Ans. Yes, sir; they do.

X Q. 1219. When you receive an order for Lawrence L L and when out of the same send other L L's you explain to the buyer the reason for not sending the Lawrence, do you not?

Ans. Yes, sir.

Redirect examination:

R. D. Q. 1220. When you receive an order for Lawrence L L's and are out of the same and substitute in lieu thereof other L L's, such L L's are always of the same weight, grade, or quality as the Lawrence L L's, are they or not?

Ans. They are supposed to be.

R. D. Q. 1221. Would you fill such an order with Atlantic L L?

Ans. No, sir.

R. D. Q. 1222. Why not?

Ans. Well, because I'd think he didn't want it unless he asked for it. I wouldn't send it because they are not the same grade as the other L L's—lighter weight.

R. D. Q. 1223. Does the Atlantic L L come into competition in the trade with the Lawrence L L?

Ans. No, sir.

195 R. D. Q. 1224. While to you and to your trade L L may have the significance that it refers to goods of a certain grade or quality, has it or not a meaning to you and the trade more than indicating a grade or quality? If so, what other meaning has it?

Ans. I should say grade and quality. It used to be known as Lawrence L L. I understand or have understood that L L sheetings meant Lawrence L L, and it has been so understood by the trade.

Recross-examination:

Re-X Q. 1225. Did L L stamped upon goods branded Atlantic Mills ever convey to you or to the trade, so far as you know, the signification that such goods were made by the Lawrence Mills, and were the same identical goods as the Lawrence L L's?

Ans. No, sir.

Re-X Q. 1226. Did L L stamped upon goods branded Badger State ever convey to you or the trade the significance that those goods were made by the Lawrence Mills and were identical with the Lawrence L L?

Ans. Well, about the same grade; yes, sir.

Re-X Q. 1227. I did not ask if they were of the same grade, but asked if L L stamped upon goods branded Badger State ever conveyed to you or the trade the significance that those goods were made by the Lawrence Mills and not by some other mill?

Ans. Yes, sir.

Re-X Q. 1228. What do you mean by "Yes, sir?"

Ans. I considered that the Badger State goods are about the same quality and weight that the Lawrence L L goods are.

Re-X Q. 1229. I did not ask you if they were of the same quality or weight, but asked you if you understood that they were made by the same mill?

Ans. No, sir.

196 Re-X Q. 1229½. Then does L L branded upon goods stamped Beaver Dam convey to your mind or that of the trade that the goods so branded Beaver Dam L L are made by the Lawrence Mills?

Ans. No, sir.

Re-X Q. 1230. Is not the impression conveyed to your mind and to the trade, so far as you know, by L L stamped upon goods branded Beaver Dam, Badger State, etc., that they are of the grade which you know as four-yard goods?

Ans. Yes, sir.

Re-X Q. 1231. And this is the only meaning that they convey when stamped upon goods so branded?

Ans. No, sir.

Re-X Q. 1232. Can an ordinary buyer by merely looking at four-yard goods and five-yard goods and not feeling them tell whether a sheeting is four-yard or five-yard goods?

Ans. I think they can.

Re-X Q. 1233. Do you speak of buyers for wholesale and retail houses?

Ans. Both.

Re-X Q. 1234. It would take one who was an expert in such goods, would it not?

Ans. No, sir; I do not think it would.

Re-X Q. 1235. Do you mean to say that any ordinary consumer of such sheetings could, by merely looking at a sheeting, know that it was goods that weighed four yards to the pound?

Ans. No, sir.

Re-X Q. 1236. Then you speak of those who are retailers or jobbers of such goods and not of the individual consumers?

Ans. Yes, sir.

197 Re-X Q. 1237. You do not think, then, that the ordinary consumer who purchases brown sheetings could tell whether a goods was a four-yard or five-yard goods to the pound unless they felt the texture?

Ans. No; I don't think they could; some might.

Re-X Q. 1238. If I understand you, you mean to say in your foregoing deposition that L L designates a four-yard goods made by the Lawrence Company when the goods is also stamped Lawrence Mills?

Ans. Yes, sir; Lawrence L L you mean.

Re-X Q. 1239. And that when stamped upon goods branded Badger State it means a four-yard goods, but does not mean that the goods are made by the Lawrence Mills?

Ans. No, sir; that they are not made by the Lawrence Mills.

Re-X Q. 1240. And that when stamped Beaver Dam L L it means a four-yard goods, but does not mean that the goods are made by the Lawrence Mills?

Ans. No, sir; it does not mean that they are made by the Lawrence Mills, but it means a four-yard goods.

Re-X Q. 1241. This is your understanding and that of the trade, so far as you know, is it not?

Ans. Yes, sir.

Redirect examination:

R. D. Q. 1242. Do you wish to be understood as saying that the retail merchant, as a rule, understands that L L on sheetings means that it weighs four yards to the pound?

Ans. No, sir; I do not; some of them may.

R. D. Q. 1243. In speaking or in your answer to cross-question 1229, which is here read to you, do you refer to your own understanding alone, or do you know what the trade may under-

198 stand from it? This question 1229 being as follows: "Then does L L branded upon goods stamped Beaver Dam convey to your mind or that of the trade that the goods so branded Beaver Dam L L are made by the Lawrence Mills?

Ans. No, sir; the goods branded Beaver Dam L L are made by the Beaver Dam Mills?

R. D. Q. 1244. That is what it means to you and the jobbing trade?

Ans. Well, it don't mean that; we know it; we buy it from the Beaver Dam Mills.

R. D. Q. 1245. Do you know whether the retail merchant knows that goods branded L L and also stamped Beaver Dam is made at the Beaver Dam Mills?

Ans. Yes, sir; it's generally understood so.

R. D. Q. 1246. Does the consumer know this?

Ans. Well, it's a question I can't answer; some of them may know if they have been told where the goods are made.

E. WILLIAMS.

ALF. BROOKS, being first duly sworn, deposes and says:

My name is Alfred Brooks; my age is 38 years; I reside at Winona, Minn; I am engaged, together with Mrs. Abigail Brink, in conducting the retail dry-goods business belonging to the estate of J. L. Brink, deceased. I have been in the dry-goods business in this town for eleven years and four years before I came here.

Q. 1247. State whether during the past eleven years you have been familiar with and sold brown sheetings stamped with the letters L L.

Ans. Yes, sir.

Q. 1248. Suppose a customer were to come into your store and ask for L L sheetings what would you understand him to
199 want?

Ans. Lawrence L L.

Q. 1249. Is that its general significance in the trade with which you are familiar?

Ans. Yes, sir.

Q. 1250. Have you handled any other L L sheetings than the Lawrence; if so, what?

Ans. Yes, sir; Badger L L.

Q. 1251. In this section of the country what class of persons mostly buy such sheetings?

Ans. Laboring and poorer classes; they buy it for shirts and underwear purposes.

Q. 1252. Give us your opinion whether an ordinary purchaser of such goods would likely be deceived in supposing the Badger State stamped with L L to be the Lawrence L L.

Defendant excepts to this as calling for the mere opinion of witness and not for facts.

Ans. The majority of them would.

Q. 1253. Would or not this be the case if such sheetings were stamped with any other machine, and yet having the L L as prominent as the L L on the Badger State?

Defendant makes the same exception as the last.

Ans. I don't think 'twould make much difference with them.

Cross-examination:

X Q. 1254. How long have you sold the Badger State L L?

Ans. About six years.

X Q. 1255. Do not some of your customers like it as well as they do the Lawrence L L?

Ans. Yes, sir.

200 X Q. 1256. Have you ever handled any L L goods except these two?

Ans. Not to my recollection.

X Q. 1257. Let me refresh your memory, and ask if you have not handled and sold Atlantic L L's?

Ans. I never did.

X Q. 1258. You know the goods and have seen it in the market?

Ans. Yes, sir.

X Q. 1259. Is it not used by the laboring and poorer classes for shirts and underwear?

Ans. I should judge it was.

X Q. 1260. It is of the same general character, but of lighter weight than the Lawrence and Badger State; how is that?

Ans. That's my impression.

X Q. 1261. You got your impression and idea of the meaning which you attach to the letters L L from your greater familiarity with the Lawrence L L sheeting, did you not?

Ans. Longer and greater familiarity; I should answer that.

X Q. 1262. If you had handled Atlantic L L sheeting as constantly and as long as you have Lawrence L L, and had sold the Atlantic L L to the same general trade, then should a purchaser, under such circumstances, have called for L L sheeting you would naturally have asked whether Atlantic L L or Lawrence L L was wanted, would you not?

Ans. There has always been such a similarity in the Badger and Lawrence L L that I have invariably substituted one for the other; the Atlantic L L we never have kept.

X Q. 1263. I never asked you one word about Badger L L, or substituting it for Lawrence. Will you please answer the

201 question as above asked you?

Ans. If I had all three kinds in stock I would; if not, no.

X Q. 1264. If you had the Atlantic L L only in stock you would give the person asking that goods, would you not, unless they particularly specified a different brand?

Ans. I should try and sell it to them.

X Q. 1265. You know, as a merchant, that the Atlantic L L sheeting is known generally as Atlantic L L?

Ans. I do.

X Q. 1266. And the Lawrence as Lawrence L L?

Ans. I do.

X Q. 1267. And the Badger State as Badger State L L?

Ans. I do.

X Q. 1268. Do you not also know that L L is generally accepted as signifying, with the exception of the Atlantic, a certain grade or

quality of standard sheeting, as distinguished from other grades or qualities of standard sheeting?

Ans. I don't know it, but I have always supposed that it was a certain grade in that particular mill.

X Q. 1269. That is, you have always understood that the Lawrence Mills stamped L L upon certain goods to show of what particular grade it was?

Ans. Yes, sir.

X Q. 1270. And that the Badger State stamped L L upon certain of their goods to show of what particular grade it was?

Ans. Yes, sir.

X Q. 1271. This is your understanding and that of the trade and consumers, so far as your knowledge enables you to give an opinion?

Ans. Yes, sir.

202 X Q. 1272. Do not most consumers of such goods walk in and feel the texture of the goods they want, and so usually make their purchases?

Ans. A great many of them do.

X Q. 1273. You do not sell the Badger State L L under any pretense that it is the Lawrence L L, do you?

Ans. No, sir.

X Q. 1274. The Lawrence L L is always branded with a bull's head and the words Lawrence Mills, is it not?

Ans. I think it is.

X Q. 1275. How many customers can you call to mind, if any, who have been deceived and taken the goods branded with Badger State and the monogram for the Lawrence Mills make of L L's?

Ans. I couldn't say; but we have had customers call for muslin with two L's on it, and we have sold them Badger L L when we had it or the Lawrence L L.

X Q. 1276. They may have wanted the Badger State as likely as the Lawrence L L, may they not?

Ans. I couldn't say, not keeping but one brand of the two kinds at one time.

X Q 1277. They just asked you for L L without themselves looking at the brand; is that so?

Ans. Yes, sir.

X Q. 1278. Now, you have spoken of persons being likely to confound the Badger State L L with Lawrence L L on account of the letters L L. Now, the person looking at the letters L L, and ignoring everything else on the brand, would just as likely counfound Atlantic L L and Lawrence L L, would they not?

Ans. Ignoring quality and being governed by brand solely,

203 they might.

X Q. 1279. It takes an expert to merely look at and not handle brown sheeting and tell what the quality is, does it not?

Ans. I don't think he can do it.

X Q. 1280. Then, ordinary purchasers, whether retailers or consumers, ignoring the brand, could not, generally speaking, say by mere inspection, without touch, whether a sheeting was a 4-yard or a 5-yard sheeting?

Ans. I think not.

X Q. 1281. Then, if an ordinary purchaser should look at Lawrence L L or Atlantic L L, ignoring all the brand but the L L's, and not touching or feeling them, would he not be as likely to confound them as he would to confound the Lawrence L L and the Badger State L L under the same conditions?

Ans. He might.

X Q. 1282. The one is as likely to happen as the other under the conditions stated, is it not?

Ans. Not in all cases.

X Q. 1283. If they go by the L L, and that is the same on all three, and by looking and not touching the difference in grade is not ascertainable, then explain, if you please, the difference between the two cases and the probabilities as to their happening.

Ans. If the grade is not ascertainable by looking and nothing else to be looked at but an L L, then it would be impossible.

X Q. 1284. Do you mean by the last answer that it would be impossible for there to be any more likelihood of confounding the Lawrence with the Badger State than the Lawrence with the Atlantic?

Ans. Yes, sir.

X Q. 1285. Then an ordinary customer or consumer wanting Atlantic L L and seeing Lawrence L L, and looking at the L L and nothing else, would be likely to think it was the Atlantic, unless, by touch or information conveyed to him by another, he knew the grade of the goods?

204

Ans. Yes, sir.

Redirect examination:

R. D. Q. 1286. Before you handled any Badger State L L's was there any doubt in your mind what a customer wanted when he asked for L L sheeting?

Ans. For a long time there was not.

R. D. Q. 1287. After you commenced handling the Badger L L's, and a customer should ask you for L L sheetings, as referred to in your cross-examination, you would show him the Badger L L's, would you or not?

Ans. If I didn't have the other I would.

R. D. Q. 1288. In such a case did you have any difficulty in persuading the customer to take the Badger L L?

Ans. No, sir.

R. D. Q. 1289. The L L when stamped on the Badger State goods and the Lawrence goods in both instances meant the same grade and quality of goods?

Ans. Not in my judgment.

R. D. Q. 1290. What difference to you was the meaning of L L when applied to these goods—Badger State and Lawrence?

Ans. I have always considered the Badger L L the best of the two.

R. D. Q. 1291. Are not these two brands of goods in competition in the trade?

Ans. They are considered so.

R. D. Q. 1292. At the same price?

205 Ans. In my judgment, not.

R. D. Q. 1293. Are not these goods, Lawrence L L's and Badger State L L's, quoted and sold to the trade at the same price?

Ans. I have often found a difference.

R. D. Q. 1294. Which commands the higher price?

Ans. With me, the Badger.

R. D. Q. 1295. Have you ever paid more at the place where sold for the Badger L L's than you have for the Lawrence L L's?

Excepted to as irrelevant, incompetent, and as new matter not appertaining to the cross-examination.

Ans. Not to my recollection.

ALF. BROOKS.

STATE OF MINNESOTA, } ss:
County of Winona, }

The above depositions of E. Williams and Alf. Brooks were taken before me by consent of parties, the same being written by me, and the witnesses respectively signed the same in my presence, having been by me first duly sworn.

Witness my hand and notarial seal this 30th day of June, A. D. 1886.

[SEAL.] FRANK L. RANDALL,
Notary Public in and for Winona Co., Minnesota.

My fees, $5.00; paid by complainant.

Depositions taken at Red Wing, Minnesota, by consent, all formalities being waived, on this the 1st day of July, A. D. 1886, before Andrew Lindgren, a notary public in and for Goodhue county, Minnesota.

Present: W. G. Rainey, for complainant; J. M. Dickinson, for the defendants, Aurora Cotton Mills, Evansville Cotton M'f'g Co., and Tennessee M'f'g Co.

CLIFFORD BELANGER, being duly sworn, deposes as follows:

206 My name is Clifford Belanger; I am 39 years old; I reside at Red Wing, Minnesota; am a retail dry-goods merchant; have been in that business about fourteen years, and am now one of the firm of C. Belanger & Bro.

Q. 1296. State if during these fourteen years you have been familiar with and selling brown sheetings stamped with the letters L L?

Ans. I have for the past ten years.

Q. 1297. How were the first sheetings with L L upon it otherwise stamped or known which you handled and sold?

Ans. Lawrence L L.

Q. 1298. Were they or not known to the trade with which you were familiar as Lawrence L L sheetings?

Ans. They were so far as they were represented to them by us.

Q. 1299. What other L L sheetings have you handled and sold, and for how long?

Ans. We have sold the Badger L L and, I think, the Beaver Dam L L for four or five years.

Q. 1300. Is it known to you or to the trade with which you are familiar how many yards of such goods weigh a pound?

Ans. No, sir.

Q. 1301. How do you order L L sheetings from the jobber?

Defendant excepts to this question as irrelevant and incompetent, as being the individual practice of the witness only that is called for.

Ans. If we want Lawrence L L we order it as Lawrence L L.

Q. 1302. State whether or not such orders are always filled with the Lawrence goods. If not, how are they filled?

207 Defendant excepts to this question as irrelevant and incompetent.

Ans. No, sir. We have sometimes ordered the Lawrence L L and received Beaver Dam or Badger L L instead. Sometimes we have ordered the Badger L L and got the Lawrence L L.

Q. 1303. Are these several L L's all of the same grade or quality?

Ans. They have been represented to us as such.

Cross-examination:

X Q. 1304. Do you know, as a merchant, that there is a brown sheeting sold in the trade stamped Atlantic Mills L L and known as Atlantic L L, do you not?

Ans. I think there is. We haven't handled it very much.

X Q. 1305. Do you know how many yards of the Atlantic L L it takes to make a pound?

Ans. I do not.

X Q. 1306. The Atlantic L L is used by laborers and the poorer classes for shirting and underwear and similar purposes, is it not?

Ans. We have not handled it enough to know.

X Q. 1307. For what purposes are the Lawrence, Badger State, and Beaver Dam used and sold?

Ans. We sell it as a general family cotton.

X Q. 1308. Is not the Atlantic L L also a general family cotton?

Ans. I presume so.

X Q. 1309. Some consumers may prefer the one and some may prefer the other for general family cotton goods, may they not?

208 Ans. I don't know as to that; we have not handled it enough. We prefer the Lawrence and the Badger.

CLIFFORD BELANGER.

ANTON H. BOXRUD, being first duly sworn, deposes as follows:

Q. 1310. —.

—. My name is Anton H. Boxrud; I am thirty-seven years old; I reside at Red Wing, Minnesota; my occupation is that of a retail dry-goods merchant; have been in that business myself for six years; prior to that I was a dry-goods clerk; am now a member of the firm of Boxrud Bros.; have been here twenty years.

Q. 1311. During the past fourteen years state whether you have handled and sold coarse brown sheeting stamped with L L.

Ans. We have.

Q. 1312. How were the first of such sheetings which you handled known to you and your trade?

Ans. The only sheeting that we handled was the Lawrence L L that I was acquainted with.

Q. 1313. From whom did you buy such sheetings?

Ans. From our jobbers in Chicago and elsewhere.

Q. 1314. Through traveling men representing those jobbers?

Ans. Yes; and also when I went to the market.

Q. 1315. How were such sheetings mentioned or talked about by the jobbers or the traveling men?

Defendant excepts to this question as irrelevant and incompetent.

Ans. As double L L's and sometimes as Lawrence L L's.

Q. 1316. When the jobber or traveling man spoke of L L sheetings what did you understand him to mean?

Defendant excepts to this question on the ground of the
209 mere interpretation or opinion of witness being called for are not for proof of facts or as to general usage in trade.

Ans. The Lawrence L L's was the only sheeting we meant by that term.

Q. 1317. Was that the general meaning of the term L L in the trade with which you are familiar?

Ans. It was.

Q. 1318. To what class of consumers did you sell such goods?

Ans. To all our trade; principally the farmers.

Q. 1319. Do you know or do the consumers know of what weight the Lawrence L L sheetings are?

Ans. I don't know the exact weight, and I don't suppose the consumers know.

Cross-examination:

X Q. 1320. How do you know that the consumers do not know its weight?

Ans. I said I supposed they did not know.

X Q. 1321. Then you do not know whether they knew it or not?

Ans. No, sir.

X Q. 1322. Did you ever, before you were first spoken to to become

a witness in this lawsuit, ever hear any discussion or question as to what L L on brown sheeting meant generally to the trade?

Ans. No.

X Q. 1323. Now, you have been in your business familiar with the Lawrence L L much more than with any other of the L L sheetings, have you not?

Ans. Yes.

210 X Q. 1324. Have you not, from this familiarity with Lawrence L L when you handled no other L L, associated L L in your mind with goods of the Lawrence make?

Ans. No.

X Q. 1325. With what, then, have you associated the letters L L in your mind?

Ans. With Badger State L L and Beaver Dam, which I consider about equal in quality and value.

X Q. 1326. Then L L, to your mind, conveys the information that the goods on which they are stamped is of a certain standard or grade of brown sheeting, as distinguished from other grades of brown sheeting?

Ans. Yes, as of the standard of the Lawrence L L, which we have held as the standard.

X Q. 1327. This L L on the Lawrence Mills sheeting always indicated to the trade the quality or grade of the sheeting, did it not?

Ans. Yes, sir.

X Q. 1328. The Lawrence goods was always branded with the trade-mark of a bull or bull's head, the words Lawrence Mills sheeting, and also with the letters L L, were they not?

Ans. Yes, sir; all that I ever saw.

X Q. 1329. The Lawrence goods and the Badger State and the Beaver Dam have always been known in the trade, respectively, as Lawrence L L, Badger State L L, and Beaver Dam L L, have they not?

Ans. I believe they have.

X Q. 1330. When you spoke of jobbers and salesmen talking of the Lawrence goods and speaking of them as L L's, those were jobbers and salesmen who, at the time of speaking of them, were offering that particular brand for sale, were they not?

211 Ans. The first seven or eight years in business I knew no other brand than the Lawrence L L. Since the Beaver Dam and Badger State have come in and when the L L's are mentioned we generally ask what brands they handle and carry in stock.

X Q. 1331. Then when you spoke of understanding them to mean Lawrence L L when they mentioned L L's you referred, did you not, to the time when you were only buying that particular brand of L L?

Ans. Yes, sir.

X Q. 1332. Have you ever handled the Atlantic L L?

Ans. I don't think we have.

X Q. 1333. You know, as a merchant, that there is a brown sheeting advertised and sold to the trade as Atlantic L L, do you not?

Ans. Yes; I think there is.

X Q. 1334. Now, in speaking in your foregoing deposition of the meaning of L L, have you been giving your own opinion as created by your personal experience with Lawrence goods?

Ans. Yes, sir.

X Q. 1335. Do you undertake to state that the settled opinion of the public and trade generally and consumers is the same as yours? And, if you say it is, then explain how you are enabled to speak positively of the opinions of others in this matter.

Ans. I can say that, as far as my experience has been in the business, that whenever we had the Lawrence L L's, the Badgers, and the Beaver Dams in stock at one time, our clerks as well as our customers have agreed with us that there is not much choice in either of them.

X Q. 1336. A customer designates the one of them which he wants by calling for Lawrence L L, Beaver Dam L L, or Badger State L L, does he not?

212 Ans. Yes; if we get an order for a Badger L L, for instance, and should not have that in stock, but did have a Lawrence L L, we should not hesitate to substitute that brand.

X Q. 1337. You generally explain that you are out of the make ordered when you make such a substitution?

Ans. Yes.

Redirect examination:

R. D. Q. 1338. Should you have an order for Lawrence L L, and were out of the same, but had the Beaver Dam or Badger State, you would substitute the one on hand for the Lawrence L L, would you not?

Ans. Yes, sir.

R. D. Q. 1339. Is it or not a fact that since you have been handling Badger State and Beaver Dam L L's should one inquire of you about L L sheetings that you would have in mind Lawrence L L?

Ans. Yes; as that is the best-known and oldest brand, to my knowledge.

R. D. Q. 1340. Question 1325 is as follows: "With what, then, have you associated the letters L L in your mind?" to which you answered, "With Badger State L L and Beaver Dam, which I consider about equal in quality and value." Do you mean by this answer that you do not think of Lawrence L L, or that Badger State and Beaver Dam L L you consider "about equal in quality and value" with the Lawrence L L?

Ans. I had Lawrence L L in there, didn't I? If I didn't I meant to have.

R. D. Q. 1341. While L L on the sheeting may mean to the trade sheetings of a particular grade or quality, still is it or not a fact that that means more—*i. e.*, it means primarily goods made by the Lawrence Mills, or Lawrence L L's?

Ans. It means, in my mind, Lawrence L L or the other
213 two brands that I mentioned.

R. D. Q. 1342. Then you do not mean in your answer to

cross-question 1324 that you do not associate L L in your mind with goods of the Lawrence make?

Excepted to as leading.

Defendant excepts to a statement made by Mr. Rainey in the presence of the witness, that the witness did not understand the question, or he never would have answered it in that way.

Ans. I meant, in answering no, that I never got mixed on the three brands; I knew them apart perfectly, but still considered them of equal value to our customers.

R. D. Q. 1343. But you always associate with L L Lawrence goods, do you or not?

Ans. Yes; certainly.

Recross-examination:

Re-X. Q. 1344. You also associate Badger State and Beaver Dam with L L, do you not?

Ans. Yes, sir.

Re-X Q. 1345. If a customer should come in and call for L L sheeting would you not ask him which brand he wanted?

Ans. No; I should give him the one I had in stock.

Re-X Q. 1346. If you had all three in stock, then you would ask which he wanted?

Ans. Yes; I should let him take his choice.

ANTON H. BOXRUD.

STATE OF MINNESOTA, } *ss:*
Goodhue County, }

The above two witnesses, Clifford Belanger and Anton H. Boxrud, were duly sworn by me before their depositions were taken,
214 and the said depositions were written out, by consent of parties, by O. M. Hall.

Dated Red Wing, Minn., July 1st, 1886.

[SEAL.] ANDREW LINDGREN,
Notary Public, Goodhue Co., Minn.

Fees for taking depositions, $3.00; paid by complainant.

The following depositions taken on the part of the complainant, under the same stipulation made in the caption of the deposition of John Kilburne *et al.*, at Boston. All formalities of caption and certificate waived.

W. G. Rainey, present, representing complainant, and J. M. Dickinson, present, representing the Tennessee M'f'g Co., and also the Evansville Cotton M'f'g Co. and the Aurora Cotton Mills, but these last two only as respects witnesses named in the notice. All other witnesses are cross-examined as to those two companies, subject to ratification of their respective solicitors, D. C. Givens and A. J. Hopkins. Said depositions taken before me, E. C. Stringer, at Hastings, Minnesota, this July 1, 1886.

D. E. EYRE, being first duly sworn, deposes as follows:

My name is D. E. Eyre; age, 48; residence, Hastings, Minn.; occupation, retail dry-goods merchant; have been at Hastings, Minn., engaged in said business for myself, for more than fifteen years.

Q. 1347. State whether you have been selling for the past fifteen years coarse brown sheetings branded with the letters L L.

Ans. Yes.

Q. 1348. What significance or meaning is conveyed to your mind when you hear the term L L when applied to sheetings—what do you understand L L to mean when applied to sheetings?

Ans. I understand the Lawrence L L.

Q. 1348½. State whether or not L L has the same signifi-
215 cance to the trade with which you are familiar as it has to you, so far as your knowledge goes.

Ans. I should like to know what you mean—whether my customers or the trade generally.

Q. 1349. I refer to the trade generally with which you are familiar.

Ans. Yes; I think it does.

Q. 1350. You know that there are other L L sheetings in the market, do you not? Should you answer yes, please designate how such sheetings are otherwise known and called.

Ans. Well, yes; well, they are known as the Badger State L L, or any other brand of L L, as Aurora L L; there are five or six of them, I believe.

Q. 1351. As a rule, how are dry goods, including sheetings, sold to the retail merchant?

Ans. Well, that depends; some buy by the brand; probably most, probably the majority, buy by the brand on brown cottons; some buy by the weight and count.

Cross-examination:

X Q. 1352. You have had large experience as a dry-goods retail merchant, have you?

Ans. Yes.

X Q. 1353. You have bought from the jobbers frequently, have you?

Ans. Yes.

X Q. 1354. To buy intelligently one must be posted in the list prices and in the different kinds of goods which he handles; is not this true?

Ans. Yes.

X Q. 1355. Are not the several brands of L L sheeting
216 listed and quoted to the trade generally as Lawrence L L, Shawmut L L, Aurora L L, Badger State L L, Beaver Dam L L, Atlantic L L, etc.?

Ans. Yes; they are all quoted.

X Q. 1356. And by the names above designated, are they not?

Ans. Yes.

X Q. 1357. You never saw any brown sheeting quoted simply as L L without the name of the maker or some other word, such as Lawrence, Badger State, Aurora, etc., prefixed to the L L?

Ans. No; I don't think I have.

X Q. 1358. Are not the several brands known and designated in the trade with which you are familiar as Lawrence L L, Shawmut L L, Atlantic L L, Beaver Dam L L, and Badger State L L?

Ans. Well, that, of course—let me see, to a certain extent they are.

X Q. 1359. You know the brown sheeting known in the trade as Atlantic L L, do you not?

Ans. I know there is such a brand quoted.

X Q. 1360. What brands of L L sheeting have you handled besides the Lawrence L L?

Ans. Well, I have handled the Badger State, I think, and probably some others, I think.

X Q. 1361. How long have you handled the Badger State?

Ans. Well, I have handled a few pieces occasionally. I cannot tell you how long. It is a new mill comparatively.

X Q. 1362. You have handled very little of the L L goods outside of the Lawrence L L, have you not?

Ans. Well, I have handled more of the Lawrence than any
217 other L L brand.

X Q. 1363. You have handled very little of the L L goods, outside of the Lawrence, have you not?

Ans. Very little.

X Q. 1364. How long since you first began handling other L L's besides the Lawrence?

Ans. It can't be over four or five years.

X Q. 1365. Then you and the trade to which you sold had very little acquaintance with any L L but the Lawrence?

Ans. That is it exactly.

X Q. 1365½. Did you ever handle the Shawmut L L?

Ans. I think I have handled Shawmut L L.

X Q. 1366. Did the L L on that goods convey to your mind the significance that it was the make of the Lawrence Mills?

Ans. The understanding among the trade is that the Shawmut L L is a second of Lawrence. That is the understanding.

X Q. 1367. You, however, did not know that fact until Mr. Rainey informed you of it a few moments ago in this room before you were sworn, did you?

Ans. I think I did.

X Q. 1368. Did L L on goods branded Shawmut convey to your mind the significance that the goods so branded were made by the Lawrence Mills?

Ans. The L L alone might not have conveyed it if I had not heard it often in the market.

X Q. 1369. Is it not your understanding that L L branded on Shawmut and Lawrence sheetings indicates to the buyers that the goods so branded L L are of a certain grade or quality of standard

sheeting, as distinguished from other grades or qualities of standard sheetings?

218 Ans. They are not a standard sheeting, in the first place. They are not understood that way.

X Q. 1370. Is it not your understanding that L L branded on goods stamped Shawmut and Lawrence sheetings indicates to the buyer that the goods so branded L L are of a certain grade of sheeting, as distinguished from other grades in the market?

Ans. My experience may be different from others in regard to it. I have always understood that the Lawrence L L was a standard 4-yard sheeting.

X Q. 1371. Is it not your understanding that L L stamped upon sheeting branded Lawrence Mills indicates to the buyer that the sheeting so branded is of a certain grade or quality of brown sheeting, as distinguished from other grades of brown sheeting in the market?

Ans. It differs from some in weight and count.

X Q. 1372. Is it not your understanding that L L stamped upon sheeting branded Lawrence Mills indicates to the buyer that the sheeting so branded is of a certain grade or quality of brown sheeting, as distinguished from other grades of brown sheeting in the market?

Ans. When I answered that I didn't think that was the question. I would like to tell you what I did think about it. I thought it meant from other grades of L L. To the full question I answer, Yes, to my mind.

X Q. 1373. Is it not your understanding that L L stamped on goods branded Badger State and Beaver Dam indicates to the buyer that they are of a general grade of brown sheeting which you know to be a 4-yard sheeting, although they may differ somewhat in make and desirability from each other and from the Lawrence L L?

Ans. They are commonly called 4-yard sheeting.

X Q. 1374. And the L L stamped on them indicates this

219 fact to the buyer, does it not?

Ans. It is commonly so understood.

X Q. 1375. You have seen the Atlantic L L sheeting at the jobbers?

Ans. I have never handled the Atlantic L L. I think I have seen it a good many times.

X Q. 1376. When you saw brown sheeting stamped Atlantic Mills L L you did not think that it was in fact Lawrence L L sheeting, did you?

Ans. No; I think not.

X Q. 1377. If you had looked only to the L L and ignored the rest of the brand, Atlantic and Mills, you might have confounded the two, might you not?

Ans. What do you mean by that? Do you mean by looking at the quality of the goods?

X Q. 1378. I will put the question as follows: Suppose you casually looked at the brand, without feeling or touching the goods,

and looked only at the L L, ignoring all the balance of the brand, then might you not mistake Atlantic L L for Lawrence L L?

Ans. There might be such a case.

X Q. 1379. Or might you not, under the same conditions, mistake Lawrence L L for Atlantic L L?

Ans. Yes.

X Q. 1380. You never saw L L branded on sheeting known as Lawrence L L to buyers unless the letters L L were always accompanied with the device of a bear or a bear's head and the words Lawrence Mills, did you?

Ans. I can't tell you about the device.

X Q. 1381. How about the words Lawrence Mills?

220 Ans. My recollection is that the words Lawrence Mills are always on the goods.

X Q. 1382. Then L L when stamped on sheeting branded Lawrence Mills means a 4-yard goods?

Ans. I so understand it.

X Q. 1383. The words Lawrence Mills indicate the name of the maker, do they not?

Ans. Yes; I believe they do.

X Q. 1384. The L L when stamped on Badger State and Beaver Dam mean that they are 4-yard goods?

Ans. Practically, I believe they do.

X Q. 1385. It does not indicate anything else when stamped on those goods?

Ans. That is the common understanding of it. They are not really 4-yard goods, as quoted, in some cases.

X Q. 1386. If you had handled Atlantic L L at the same time you handled Lawrence L L you would have distinguished them in selling them to your trade as Atlantic L L and Lawrence L L, would you not?

Ans. Yes; I think I should.

X Q. 1387. In that instance, then, L L alone when used would not have necessarily indicated which brand was meant, would it?

Ans. No; I should not think it would.

Redirect examination:

R. D. Q. 1388. Do you wish to be understood by anything in your cross-examination to limit or qualify what you stated in your direct examination, that the significance or meaning, as conveyed to your mind when L L is mentioned with reference to sheetings, that you understand it to mean Lawrence L L?

Ans. No; I do not.

221 R. D. Q. 1389. While to you and to the trade it may mean sheetings of a certain grade or quality, as four yards to the pound, yet is it not a fact that when L L is mentioned it also conveys to your mind goods made by the Lawrence Mills?

Defendant excepts to this question as leading.

Ans. To me it does.

Recross-examination:

Re-X Q. 1390. Does L L, when used by a person who had been buying and was familiar with Atlantic L L, convey to your mind that the Atlantic goods which he had in mind and spoke of as L L's were made by the Lawrence Mills?

Ans. Not if he spoke of them as Atlantics it would not.

Re-X Q. 1391. Suppose he had used none but Atlantics; might he not speak of them as L L's?

Ans. He might, possibly.

Re-X Q. 1392. Is not that goods just as much Atlantic L L as the Lawrence is a Lawrence L L?

Ans. I presume that is so.

Re-X Q. 1393. Then is not one who was familiar with that goods—that is, the Atlantic L L—just as likely to call it L L's as one who was familiar with Lawrence goods is to call that make L L's?

Ans. That may be the case, very likely.

Re-X Q. 1394. You speak according to what you have been familiar with, do you not?

Ans. Yes.

Re-X Q. 1395. Do you undertake to say that the public generally, buying brown sheetings, have the same understanding of L L that you do, or are you speaking merely for yourself and your particular trade?

222 Ans. Among the buyers that I am acquainted with, if they should speak about L L sheeting, it is commonly understood to be Lawrence L L.

Re-X Q. 1396. Have these buyers any familiarity with the Atlantic L L?

Ans. That I could not say. They are buyers that I have ordinarily met in New York.

Re-X Q. 1397. Did you ever see in New York the Beaver Dam L L or Badger State L L or any other L L which you handled for sale?

Ans. No; I think I never have, and don't think I have ever seen them in that market.

Re-X Q. 1398. Then the Lawrence L L is the only L L which you have handled that you have seen in that market?

Ans. I think I have seen other L L's in New York besides the Lawrence L L.

Re-X Q. 1399. Any that you have handled?

Ans. No, sir.

Re-X Q. 1400. In speaking to those buyers to which you refer as being in New York, you at that time were only purchasing Lawrence L L's in New York?

Ans. I might not have been purchasing at all.

Re-X Q. 1401. How did your conversation come up with them in respect to L L goods?

Ans. Well, I can't say that I had any particular conversation, except what you would have in a domestic department.

Re-X Q. 1402. When did you have any conversation where the question of the meaning of L L was discussed by any of them?

Ans. I have always understood it that way.

Re-X Q. 1403. When did you hear any conversation where
223 the question of the meaning of L L was discussed by any of them?

Ans. I can give you no date. A man who has been buying goods as long as I have can give you no date.

Re-X Q. 1404. Can you name the places and the parties to such conversations?

Ans. No, sir; you would hear it in any domestic department in New York.

Re-X Q. 1405. Hear what?

Ans. That if a man spoke of L L sheeting it indicated Lawrence L L.

Re-X Q. 1406. Did you ever hear any question raised or any discussion as to the meaning of L L before you were spoken to as a witness in this suit?

Ans. I have always understood, previous to this, that L L meant Lawrence L L when nothing else was said.

Re-X Q. 1407. You do not answer my questions, but reiterate what is your understanding. Now, do you know that such understanding as you hold individually is one which is held generally by buyers of brown sheeting?

Ans. As far as I know, it is.

Re-X Q. 1408. On what do you base the knowledge upon which you undertake to swear as to the understanding of the general public?

Ans. I do not swear to anything about the general public.

Re-X Q. 1409. Do you swear as to the opinions generally held by those who buy and consume brown sheeting?

Ans. I swear only as to my own experiences and from the men I meet in the market.

Re-X Q. 1410. This is, then, the limit as to which you swear in speaking of the meaning attached to L L?

224 Ans. That is it.

Re-X Q. 1411. Now, how many men can you name whom you meet in the market, in your presence, said anything in respect of the meaning of the letters L L?

Ans. I can answer that in this way: I have been buying goods in New York once or twice a year since 1863. I cannot mention a name. I give it as casual conversations among buyers.

Re-X Q. 1412. And such conversations, in respect of the meaning of L L, were distributed all along from now back to 1863, were they?

Ans. I would not say that they went back so far as that. I said I was buying goods then.

Re-X Q. 1413. When was the first conversation?

Ans. I can give you no dates.

Adjourned till July 2, at 9 a. m.

JULY 2, 1886.

Cross-examination resumed:

X Q. 1414. When were you in New York last?
Ans. March, 1885.
X Q. 1415. Were you there in 1886?
Ans. No.
X Q. 1416. Were you there in 1884?
Ans. Yes.
X Q. 1417. In 1883?
Ans. Yes.
X Q. 1418. In 1882?
Ans. Yes.
X Q. 1419. In 1881?
Ans. I think I was there in the fall of 1881.
225 X Q. 1420. Please state what jobbing houses you were in while in New York each of said years where other L L goods were sold besides Lawrence L L.
Ans. I suppose most all of them have other brands of L L at times.
X Q. 1421. Can you now distinctly remember (without supposing) what houses which you visited during any of those years had at the time you visited them L L goods other than the Lawrence L L?
Ans. No, sir.
X Q. 1422. Can you now recall the substance of any particular conversation occurring in any of said houses during any of said years wherein the meaning of the letters L L was discussed in your presence?
Ans. No, sir.
X Q. 1423. Then, after all, is it not rather your individual expression and opinion which you have given as to the meaning of L L rather than the settled understanding of others?
Ans. My experience in goods is that that is the meaning of the the letters; it is generally understood that way.
X Q. 1424. Can you swear positively as to how others besides yourself understood it?
Ans. Only in a general way.
X Q. 1425. You have carefully considered every question that I have asked you throughout this deposition and have answered it correctly according to the best of your knowledge, information, and belief—have you or not?
Ans. Yes.

Redirect examination:

R. D. Q. 1426. From what sections of the country were the retail merchants whom you have spoken of as meeting in New
226 York?

Defendant excepts to this question as being original matter.

Ans. I will state that I met them from all over the country in a general way; I met them in the domestic departments of those jobbing house.

Recross-examination:

Re-X Q. 1427. In your last answer do you refer specifically to those who were present when something was said about the meaning of the letters L L? And, if so, state what years you specially refer to.

Ans. No, sir.

Re-X Q. 1428. Then, in answering the last question asked you by Mr. Rainey, you simply meant to explain where the merchants which you ordinarily met in New York were from, in a general way, without any particular reference to L L or any conversation in regard to L L's. Is that true?

Ans. That is it.

D. E. EYRE.

STATE OF MINNESOTA, } ss:
County of Dakota, }

The above-named witness, D. E. Eyre, was duly sworn by me before his examination, and he signed said deposition in my presence after the same had been written down by me.

[SEAL.] EDWARD C. STRINGER,
Notary Public, Dakota Co., Minn.

My fee, $5, paid by complainant.

E. C. STRINGER.

By consent the further depositions may be taken before M. V. Seymour, notary public, of the city of Hastings, county of Dakota, and State of Minnesota.

GEORGE H. GILLETT, being duly sworn, deposes and says:

Q. 1429. ——.

227 —. My name is George H. Gillett, and I am 24 years of age, and reside in the city of Hastings, Minnesota. I am in the retail dry-goods business, and am one of the firm of Gillett Brothers; have been in the dry-goods business about ten years.

Q. 1430. State whether during these ten years you have been familiar with and selling double "L" sheetings.

Ans. I have.

Q. 1431. What is the meaning conveyed to your mind when L L is mentioned with reference to sheetings?

Ans. A brand of muslins manufactured by Lawrence Mills.

Q. 1432. Is or not this the same meaning L L has in the trade, so far as you know?

Ans. Yes.

Q. 1433. Should a travelling man ask you if you wanted L L sheeting what would you understand him to mean?

Defendant excepts to this as calling merely for the opinion of the witness and not for a statement of substantive facts.

Ans. I would understand him to mean the Lawrence L L.

Cross-examination by Mr. DICKINSON for the Tennessee Manufacturing Company, and also for the Aurora Mills and the Evansville Manufacturing Company, upon the condition that their respective solicitors, A. J. Hopkins and D. C. Givens, accept the same:

Q. 1434. How long have you handled and sold the Lawrence L L?

Ans. Ever since I can remember.

Q. 1435. What other brands of L L have you handled, and for how long, respectively?

Ans. The Badger L L is the only other one that I can remember. We have handled that for a good many years. I presume ever since it has been in the market.

228 Q. 1436. Have you ever handled the Atlantic L L?

Ans. I think I have.

Q. 1437. How long ago?

Ans. I don't remember. I am familiar with the name.

Q. 1437½. About how long ago?

Ans. I presume within five years.

Q. 1438. Those several brands have been known always in the trade with which you are familiar as Lawrence L L, Atlantic L L, and Badger State L L, have they not?

Ans. Yes.

Q. 1439. They were always billed and invoiced to your house, respectively, as Lawrence L L, Atlantic L L, and Badger State L L, were they not?

Ans. I presume, likely, but I could not say positively.

Q. 1440. You do not now remember positively any of them billed in any other way, do you?

Ans. No.

Q. 1441. You are familiar with the styles and designations of those several brands as quoted by the jobbers, are you not?

Ans. Yes, sir.

Q. 1442. They are invariably quoted for the trade as Lawrence L L, Atlantic L L, and Badger State L L, so far as your knowledge goes, are they not?

Ans. That is the only way I have ever seen them.

Q. 1443. Have you handled other L L's contemporaneously with the Lawrence L L?

Ans. Yes.

Q. 1444. The Atlantic?

Ans. Not that I remember of.

229 Q. 1445. Then, at the time you handled the Atlantic L L you did not handle the Lawrence L L?

Ans. Maybe I have, maybe not; I do not remember handling the Atlantic. I think I have.

Q. 1445½. Do you not know that it is generally understood in the trade and to buyers, so far as your knowledge goes, that L L upon Lawrence sheeting and upon Badger State sheeting indicates to the

buyer that those sheetings are of a certain grade of sheeting, as distinguished from other grades of sheeting in the market?

Ans. Yes.

Q. 1446. This grade is the one which you know to be commonly called the 4-yard sheeting, is it not?

Ans. I never heard it called 4-yard sheeting.

Q. 1447. Still you do know that it designates—that is, the L L designates—a particular grade of sheeting as distinguished from those of lighter or heavier weight?

Ans. Yes.

Q. 1448. All the L L sheeting, except, perhaps, the Atlantic, are generally understood to be of one class or grade, according to weight, are they not?

Ans. The two that I am most familiar with are.

Q. 1449. And the others have the general reputation in the trade of being of the same general grade, have they not?

Ans. I could not state as to that.

Q. 1450. Then you do not undertake to state except for yourself in this matter?

Ans. No; I undertake to speak only for myself.

Q. 1451. In speaking in your direct examination of the meaning of L L do you undertake to speak except for yourself?

Ans. I speak as I understand the meaning of the term L L
230 from my own experience in trade.

Q. 1452. Do you undertake to swear that buyers of those goods in general have the same understanding that you do of the meaning of L L? And if you do undertake to so swear, then explain fully on what grounds you base the knowledge of the opinions of others.

Ans. I think that most buyers in speaking of the brand of L L simply would consider it a Lawrence, as the Lawrence is, I think, the oldest brand of L L muslin.

Q. 1453. Do you think the Lawrence Mills branded muslins with L L before the Atlantic Mills did?

Ans. I do not know that they did. I was familiar with the Lawrence brand before I was with the Atlantic.

Q. 1454. Suppose the Atlantic Mills branded muslins with L L before the Lawrence did, then what do you think would be the meaning attached to L L by those who knew that fact?

Ans. I have always understood L L to mean Lawrence, unless some other prefix was used.

Q. 1455. You have not answered my question, but evaded it; now please answer it.

Ans. I don't understand the question.

Q. 1456. You attached the meaning which you do to L L simply because of your prior familiarity with goods branded Lawrence Mills L L, do you not?

Ans. Yes; and also in buying muslins the brand of L L has always been considered as Lawrence L L by me.

Q. 1457. Then your impression of the opinion held by others in respect to the meaning of L L is only from the fact that you per-

sonally have the understanding of it, which you have declared; is not that true?

Ans. Not exactly. In buying muslins the seller would understand the same as I did what was meant by L L.

231 Q. 1458. Did you ever buy more than one brand of L L at the same time from any one seller?

Ans. Yes; I have bought both Badger and Lawrence.

Q. 1459. Do you mean to say, then, that such seller understood that L L printed on goods branded Badger State meant that those goods were the same thing as the Lawrence L L, and made by the Lawrence Mills?

Ans. I hardly think that they do.

Q. 1460. Do you not, on the contrary, well know that it is generally understood by buyers that goods branded Badger State L L are of a different make from those branded Lawrence Mills L L?

Ans. Yes.

Q. 1461. The L L branded on goods stamped Badger State does not convey the impression to any purchaser of those goods, so far as you know, that they are made by the Lawrence Mills?

Ans. They would not to me.

Q. 1462. You never saw any goods of the Lawrence make branded L L but what it was also accompanied by the stamp of a bear or bear's head, and also the words L L, did you?

Ans. I don't think I ever did.

Q. 1463. Does not L L stamped on such goods convey to your mind the signification that they designate the grade of the goods as distinguished from other grades of brown sheeting?

Ans. Yes.

Q. 1464. And the words Lawrence Mills indicate to you the name of the manufacturer?

Ans. Yes.

Q. 1465. Then, if I understand you, the words Lawrence Mills indicate to you the name of the maker of the goods and the letters L L simply show the grade of the goods; is that correct?

Ans. Yes; L L shows the grade of the Lawrence manufacture.

232 Q. 1466. And the words Lawrence Mills show the name of the maker?

Ans. Yes, sir.

GEO. H. GILLETT.

STATE OF MINNESOTA, } ss:
County of Dakota, }

The above witness, George H. Gillett, was duly sworn by me, and his deposition taken as above by consent of parties, through W. G. Rainey and J. M. Dickinson, and the witness signed the said deposition in my presence.

McNEIL V. SEYMOUR,
Notary Public of said County, Minn.

My charges, $2.50, paid by complainant.

M. V. SEYMOUR.

FRED. W. MEYER, being duly sworn, deposes as follows:

My name is Fred. W. Meyer, and am thirty-five years of age; I reside at Hastings, Minnesota, and am engaged in the business of retail dry goods and clothing, and am of the firm of Meyer & Johns; I have been in the dry-goods business at Hastings since 1877.

Q. 1467. State whether during this period of time you have been familiar with and selling coarse brown sheeting stamped with L L.

Ans. Yes, sir.

Q. 1468. State what you understand L L to mean.

Defendant excepts to this question as incompetent, because merely calling for the opinion individually of witness.

Ans. I understand the brand of a certain goods.

Q. 1469. What brand of goods?

Ans. The Lawrence Mills.

233 Cross-examination by Mr. DICKINSON:

X Q. 1470. When you see L L stamped on brown sheeting you do not understand thereby that in all cases the goods so stamped are made by the Lawrence Mills, do you?

Ans. No, sir.

X Q. 1471. Nor do you understand that the letters so stamped on such goods, as, for instance, Badger State, Aurora, or Beaver Dam L L's, indicate that those goods are made by the Lawrence Mills, do they?

Ans. No, sir.

X Q. 1472. You never saw L L stamped on goods made by the Lawrence Mills except when accompanied by the words Lawrence Mills also stamped on the goods, did you?

Ans. No, sir.

X Q. 1473. You and the purchasers of brown sheeting, so far as your knowledge goes, understand that L L stamped on brown sheetings indicates that the goods so stamped are of a certain standard grade of brown sheeting as distinguished from other grades of brown sheeting in the market?

Ans. Yes, sir.

X Q. 1474. The L L indicates the grade of the goods, does it not?

Ans. That is what I understand.

X Q. 1475. And the words Lawrence Mills, Beaver Dam, and Aurora indicate the names of the several mills making them?

Ans. Yes, sir.

Redirect examination:

R. D. Q. 1478. State whether you have ever handled any other L L sheetings; and, if so, what other, and how did it happen you got such goods?

234 Defendant excepts to so much of the foregoing question as calls for the facts respecting how it happened that he got other goods, this being a transaction *inter alios* and irrelevant to this issue.

Ans. Yes, sir; Beaver Dam L L; we ordered Lawrence L L and received Beaver Dam L L in place of it.

FRED. W. MYER.

STATE OF MINNESOTA, }
County of Dakota, } *ss:*

The above witness, Fred. Meyer, was duly sworn by me and his deposition taken as above by consent of parties through W. G. Rainey and J. M. Dickinson, and the witness signed the said deposition in my presence.

McNEIL V. SEYMOUR,
Notary Public of said County.

Depositions taken at St. Paul, Minnesota, on this, the 3d day of July, 1886, under and in pursuance of the same stipulation made in these causes in taking the depositions of John Kilburn *et al.* at Boston in May last, all formalities being waived, the same being taken by agreement upon the type-writer, it only being required that the witnesses shall be severally sworn before any notary public.

Present: W. G. Rainey, representing the complainant, and J. M. Dickinson, representing the above defendants, except the Beaver Dam Cotton Mills.

C. J. McCONVILLE, being first duly sworn, deposes as follows:

Q. 1479. Please give your name, age, and occupation.

Ans. C. J. McConville; age, 33; head of wholesale domestic department, Auerbach, Finch & Van Slyck.

Q. 1480. How long have you been with this firm and what
235 are your special duties?

Ans. Been with them fourteen years; duties are to purchase and manage and sell the goods pertaining to the department.

Q. 1481. With what class of the retail trade do you come in contact, and with what section of the country?

Ans. I come in contact with retail dry-goods merchants and general dealers throughout Minnesota, Wisconsin, Northern Iowa, Dakota, Montana, and parts of Nebraska.

Q. 1482. During these fourteen years please state whether you have been familiar with handling and selling brown sheetings stamped L L?

Ans. I have.

Q. 1483. Which brown sheetings were the first that you so handled and sold?

Ans. Lawrence L L's.

Q. 1484. Have you been handling the Lawrence L L's during this entire time, fourteen years?

Ans. Not during the entire time.

Q. 1485. What part of said fourteen years have you handled said Lawrence L L's?

Ans. Well, eight or nine years, perhaps, and at intervals during the entire time.

Q. 1486. State whether or not your house is at present handling and selling these goods.

Ans. We are.

Q. 1487. What does L L, when applied to sheetings, mean to you and to the trade with which you are familiar?

Ans. A four yard—a cotton cloth weighing four yards to the pound and measuring 56 by 60 threads to the square inch.

236 Q. 1488. State whether that is its significance in the jobbing trade or both the jobbing and retail trade?

Ans. Jobbing trade, yes; don't think the average retailer would recognize it by the exact weight in measurement; think they would know it as a medium light-weight sheeting.

Q. 1489. Is it spoken of and known in the retail trade as L L sheeting?

Ans. It is.

Q. 1490. What other L L sheeting besides the Lawrence have you been familiar with during these fourteen years?

Ans. The Badger State, Beaver Dam, Graniteville, Hoosier, and Aurora.

Q. 1491. What do you know about the trade popularity of such sheeting known as the Lawrence L L?

Ans. They are a very well known and the recognized standard brand of that grade of sheeting.

Q. 1492. Well known both to the jobbing and retail trade in sections of the country you have mentioned?

Ans. Yes.

Q. 1493. Do you ever receive orders for such sheetings simply as L L sheetings?

Ans. Yes; frequently.

Q. 1494. How are such orders filled?

Ans. By giving the customer any of the before-mentioned brands.

Q. 1495. What do you mean by saying the Lawrence L L is the standard of such grade of sheeting?

Ans. Well, I mean it possesses all of the merits necessary to make it most desirable of that grade of goods. The brand being a long time on the market it has become very popular, and the trade

237 recognized that the grade of quality is always to be relied upon, and therefore it is the standard.

Q. 1496. What comparison, if any, is made between the Lawrence and other L L's?

Ans. In selling that grade of sheeting a salesman would use the Lawrence L L as a basis of comparison to judge the merits of the others by. For instance, the Badger or Beaver Dam I regard as equal to Lawrence.

Q. 1497. What fixes the price of L L sheetings in the market?

Ans. Well, supply and demand regulates the values of everything. In my judgment, the value placed on Lawrence L L's would influence materially the price placed on the other goods.

Cross-examination by J. M. DICKINSON:

X Q. 1498. Are not these several brands known generally to those who purchase the same, so far as your knowledge goes, as Lawrence L L, Beaver Dam L L, Badger State L L, and Aurora L L, Hoosier State L L, and Graniteville L L?

Ans. I don't know what you mean by "generally." They are relatively well known. The Lawrence, Badger State, and Beaver Dam are most known in this section.

X Q. 1499. I mean do not purchasers of Lawrence L L designate that goods as Lawrence L L and purchasers of the others, respectively, designate them as Beaver Dam L L, etc., throughout the list of names?

Ans. Usually they do.

X Q. 1500. Those several brands are distinguished in the trade, so far as you know, as Lawrence L L, Beaver Dam L L, etc., throughout the list of names; is that true?

Ans. It is.

X Q. 1501. The Lawrence goods are billed or invoiced to your house and by your house to your customers as Lawrence L L,
238 are they not?

Ans. They are.

X Q. 1502. In your direct examination a question was asked as follows: "Do you ever receive orders for such sheeting simply as L L sheeting?" To which you answered, "Yes; frequently." Now, if you receive an order merely for L L sheeting, do you understand that the person so ordering necessarily means Lawrence L L or any other particular brand of L L, or that he simply wants the grade of sheeting which is generally designated L L sheeting?

Ans. He wants the grade of sheeting.

X Q. 1503. And you do not understand the order as intending any particular brand?

Ans. I do not now.

X Q. 1504. You have handled Atlantic L L sheeting, have you not?

Ans. I don't think so. I don't remember of having bought them.

X Q. 1505. You have seen them in the jobbing house?

Ans. Can't say that I have.

X Q. 1506. You have seen them quoted in the trade list of Eastern jobbing houses?

Ans. Yes; I think I have; I am not sure about it.

X Q. 1507. When you see L L stamped upon brown sheeting that is understood to indicate the grade of the sheeting, is it not?

Ans. Yes; I should say it was.

X Q. 1508. The words Lawrence Mills, Aurora, etc., indicate the name of the mills; are they not so understood, so far as your knowledge goes?

Ans. Yes.

239 X Q. 1509. You never saw L L branded upon goods made by the Lawrence Mills and known in the trade as Lawrence L L's unless they were accompanied by the picture of a bear or a bear's head and the words Lawrence Mills, did you?

Ans. Yes; decidedly I have.

X Q. 1510. Do you mean to say that the Lawrence Mills send out sheeting stamped L L, and which sheetings are known to the trade as Lawrence L L, and that the L L's are not accompanied with the words Lawrence Mills branded on the goods?

Ans. As to what the Lawrence Mills send out of course I am unable to say.

X Q. 1511. You are referring, are you not, to goods stamped L L made by the Lawrence Mills with a private brand of some dealer on them, are you not?

Ans. I have made no reference to any private brand.

X Q. 1512. Where did you ever see brown sheeting which was made by the Lawrence Mills that had L L stamped on it and did not also have the words Lawrence Mills branded on it?

Ans. I did not say that I ever saw such sheetings.

X Q. 1513. I see that it was my error, and that I put bear and bear's head when I should have used the words bull or bull's head. Now, with this change in the question, state if you ever saw such goods.

Ans. I have never seen such goods.

X Q. 1514. That is, the Lawrence L L's were always branded with the words Lawrence Mills and the bull or bull's head, so far as you know?

Ans. That is correct.

Redirect examination by Mr. RAINEY:

R. D. Q. 1515. While L L when stamped on brown sheetings may to you and jobbing trade indicate a certain brand of sheeting,
240 as you have stated in your cross-examination, is it not also true that when such sheetings are spoken of in the trade L L means more than simply the grade of the goods; if so, what other significance has it?

Ans. At present I think it only applies to the grade of the goods.

R. D. Q. 1516. Did it ever have any other signification; if so, what?

Ans. In my judgment, before the Badger State, Beaver Dam, Hoosier State, and other brands were made and introduced to the trade the term L L referred to a sheeting made by the Lawrence Mills.

R. D. Q. 1517. And that was so understood throughout the trade, was it not?

Ans. I think it was.

R. D. Q. 1518. Would you or not say that at present in the trade L L means four-yard goods made by either the Lawrence Mills, Badger State, Beaver Dam, Aurora, or the Hoosier State, or a sheeting of that grade made by one of these several mills?

Ans. I should say it was a four-yard sheeting made by any of those mills.

R. D. Q. 1519. That is as it is understood in the trade at present?

Ans. Yes, sir.

R. D. Q. 1520. When L L is referred to in your trade do you or not have in your mind the Lawrence Mills?

Ans. I do.

R. D. Q. 1521. You have stated in cross-examination that you do not understand now that an order for L L sheetings means any particular brand of such goods. Is it or not a fact that at one time prior to the time these other L L's came in the market that
241 such an order meant in the trade sheetings made by the Lawrence Manufacturing Company?

Ans. It is a fact, in my judgment.

R. D. Q. 1522. And is it or not also true that if this significance has been lost in any sense that it was by reason of the fact that these other L L sheetings have been thrown upon the market?

Ans. I think so.

R. D. Q. 1523. And is it or not your opinion that to the extent these other L L's have been sold into the market that they have to that extent taken away the trade of the Lawrence Mills in such goods?

Defendant excepts to this question as calling merely for the opinion of the witness and not for substantive facts.

Ans. Yes; I believe that is a fact.

Recross-examination:

Re-X Q. 1524. Do you know the capacity of production of the Lawrence Mills?

Ans. I do not.

Re-X Q. 1525. Do you undertake to say that they could have furnished and sold L L goods in an amount equal to the combined production of all the other mills selling such goods?

Ans. No; I can't say that.

Re-X Q. 1526. Do you know how many different mills make goods branded L L and in what amount?

Ans. I do not.

Re-X Q. 1527. You stated in your redirect examination that now L L would mean to the trade a four-yard goods made by one of the mills mentioned by you. Now, do you mean to say that to the trade it would not mean equally a four-yard goods made by some mill other than those mentioned?

Ans. I would say not in this section, because these are the
242 brands that are most generally known, and, consequently, a customer would have in his mind in ordering or purchasing that with which he was familiar.

Re-X Q. 1528. And in what you have said respecting the meaning formerly attached by you to L L you had in mind and formed your impression from the goods with which you were then familiar; is that not true?

Ans. No; rather with from what—my impression is formed from what our customers are familiar with, so far as it became cognizant to me in serving them.

Re-X Q. 1529. At that time you only served them with the Lawrence L L; is not that true?

Ans. No; it is not.

Re-X Q. 1530. Will you be kind enough to state what other L L's you served them with at the time mentioned?

Ans. Graniteville L L's, and my impression is two other brands, the names of which I can't recall.

Re-X Q. 1531. How long since you began to deal in Graniteville L L?

Ans. I can't recollect exactly; I should say twelve years.

Re-X Q. 1532. About how long since you began to serve them with the brand of L L which you cannot recall?

Ans. I think about ten years ago.

Re-X Q. 1533. About when did you begin to handle Aurora, Beaver Dam, Badger State, and Hoosier, respectively?

Ans. We first purchased Badger L L sheetings, speaking from memory, about twelve years ago.

Re-X Q. 1534. Now, go on with the others. Take the Beaver Dam.

Ans. Beaver Dam, three to four years.

Re-X Q. 1535. Now, Aurora.

243 Ans. Aurora, not more than two years.

Re-X Q. 1536. Hoosier State.

Ans. About four years, I should say.

Re-X Q. 1536½. These goods have always been designated and known in your trade, respectively, as Graniteville L L, Beaver Dam L L, Hoosier State L L, Badger L L, and Aurora L L, are they not?

Ans. I think they have.

Re-X Q. 1537. Do you know what meaning those jobbers who twelve years ago handled Atlantic L L and Lawrence L L together at the same time and what meaning their customers attached to the letters L L?

Ans. I don't.

C. J. McCONVILLE.

I, E. J. Gallien, notary public, Ramsey county, Minnesota, hereby certify that the above witness was duly sworn before the deposition was taken.

[SEAL.] EDWARD J. GALLIEN,
Notary Public, Ramsey County, Minn.

TUESDAY MORNING, *July 6th*, 1886.

Depositions continued before Howard H. Cleveland, notary public.

Present: As before; also I. C. Sloan, representing the Beaver Dam Cotton Mills.

CHARLES O. KRIEGER, being first duly sworn, deposes as follows:

Q. 1538. Please give your name, age, residence, and occupation.

Ans. Charles O. Krieger; 37; residence, St. Paul, Minnesota;

salesman for wholesale dry goods—for Lindekes, Warner
244 & Schurmeier, jobbers of dry goods.

Q. 1539. What are your special duties with this firm?

Ans. Salesman and stock-keeper, and I have charge of the domestic department of said firm.

Q. 1540. What sections of the country is reached or into which goods are sold by said firm?

Ans. Montana, Dakota, Minnesota, Wisconsin, and Iowa.

Q. 1541. State whether you meet in your trade the retail merchants in these several States.

Ans. We do.

Q. 1542. State how long you have been with this firm.

Ans. 8 years.

Q. 1543. During these 8 years have you been familiar with and selling brown sheeting stamped L L?

Ans. I have.

Q. 1544. Have you been selling during these 8 years such brown sheeting known as Lawrence L L?

Ans. I have.

Q. 1545. Can you state anything as to the popularity in the trade of such goods; if so, what?

Ans. Not anything more than that they are a popular brand and have been ever since I have been in the business.

Q. 1546. State whether or not Lawrence L L has been recognized in the trade as the standard brown sheeting of that grade or quality.

Ans. They are.

Q. 1547. During these 8 years what has been the significance to you and to your trade of L L when applied to brown sheeting?

Ans. It signifies 4-yard cotton; that is a dry goods ex-
245 pression and means 4-yard cotton.

Q. 1548. Has this expression L L, when applied to sheeting, had any other meaning during these 8 years in your trade; if so, what?

Ans. Well, it does not signify anything more to us or to our trade than a double L cotton.

Q. 1549. Did it not mean 8 years ago, when you first went in with this firm, 4-yard goods manufactured by the Lawrence Manufacturing Company?

Defendant excepts to this question as leading.

Ans. It did mean 4-yard cotton manufactured by the Lawrence L L Manufacturing Company.

Q. 1550. State whether or not that was its general signification to the trade with which you were familiar.

Same exception as to the last and incompetent.

Ans. It was when I first—in my first three years' experience in the dry-goods business.

Q. 1551. At or during that time should one inquire of you for L L sheeting what would you understand it to mean?

Defendant excepts to the foregoing as calling merely for the opinion of the witness and not for proof of facts.

Ans. Lawrence L L.

Q. 1552. State whether or not such an order would be understood by the merchant ordering the same and would have the same significance to him, as you have stated in the above answer, that it had to you.

Ans. Well, I would just like to remark here that we suppose our trade understands L L sheeting as 4-yard cotton; but most merchants, being inexperienced dry-goods merchants in this section of country, are not aware of its weight or count.

246 Q. 1553. At the time you have above mentioned state whether or not when the retail merchant should inquire of you for L L sheetings would mean the Lawrence L L's.

Ans. It would.

Q. 1554. So far as you knew, was there at that time any other such sheetings in the market than the Lawrence L L's?

Ans. Not that I was aware of.

Q. 1555. Have you handled during these eight years any other L L sheetings than the Lawrence? And, if so, please state which.

Ans. Housewife L L, Indian L L, Badger State L L, Beaver Dam L L, Aurora L L.

Q. 1556. Do you ever receive orders for such sheetings simply as L L sheeting or L L muslins?

Ans. We do.

Q. 1557. How are such orders filled?

Ans. Usually by L L of standard brands or those we have most in stock.

Q. 1558. Why do you not fill such orders with the Lawrence L L's?

Ans. Simply because there is less margin or profit.

Q. 1559. What do you mean by saying there is less margin or profit in your last answer?

Ans. First, on account of the high rate of freights to be paid from the Lawrence Mills.

Q. 1560. Does your house keep the Lawrence L L in stock at the present time?

Ans. They do.

Q. 1561. And has your house kept the Lawrence L L dur-

247 ing this entire period of eight years?

Ans. It has.

Q. 1562. Why is it that you keep the Lawrence L L in stock when you can sell other L L's at a greater profit?

Ans. On account of its popularity with some of our best trade.

Q. 1563. Is it or not a fact that your house has been, during the past few years, pushing other L L's in preference to the Lawrence?

Ans. It is.

Q. 1564. What is the custom or habit of your house in keeping the Lawrence L L's exposed to view on your counter?

Defendant excepts to this as being irrelevant and incompetent, on

the ground that it relates to a matter of private usage of this firm and not to a custom of the trade, and that there is no privity between this firm and the parties to these lawsuits.

Ans. I don't understand your question.

Q. 1565. Since your firm has been handling these other L L's have you kept the Lawrence L L's on your counters equally exposed to the view of the trade as the other L L's?

Ans. We have only in cases of strong competition.

Q. 1566. Then what has been your custom with Lawrence L L's?

Ans. Should a merchant order by mail or ask for it while in store, we should sell him what he asked for.

Q. 1567. Is it or not a fact that during such times or at times you have kept the Lawrence L L's out of sight, and do not show them to the trade unless they are specially asked for?

Defendant excepts to this question on the same ground as above set out.

Ans. It is a fact.

248 Cross-examination:

X Q. 1568. Mr. Krieger, please give the dates of the first three years that you were in business.

Ans. In July, 1878, up to July, 1881.

X Q. 1569. As I understand from what you have said, during that period you had no acquaintance or familiarity with any L L sheeting but the Lawrence. Is that correct?

Ans. That is.

X Q. 1570. Then your understanding during that period is based upon your experience with the Lawrence L L alone, is it not?

Ans. It is.

X Q. 1571. You do not undertake to say that the trade in general and purchasers in general of L L sheeting held at that time the same identical understanding of L L that you did, do you?

Ans. Not that I was aware of.

X Q. 1572. After that period you came in contact in business with other brands of L L sheeting, and then you found that the significance of L L was that it indicated that the goods on which it was branded was of a certain grade of standard sheeting, as distinguished from other grades of heavier or lighter weight. Is not this correct?

Ans. It is a fact.

X Q. 1573. The L L branded on goods indicated, as you understood, its grade or quality?

Ans. Yes, sir.

X Q. 1574. And the words, Beaver Dam, Aurora, Lawrence Mills, etc., branded on the goods indicated the name or place where it was made?

Ans. I might say yes, only that some brands are the names
249 given by the manufacturers.

X Q. 1575. But in respect of those above mentioned the words quoted indicated the name of the mill making the goods?

Ans. Yes, sir.

X Q. 1576. These different brands of L L have been always known and distinguished, so far as your knowledge goes of them, as Aurora L L, Beaver Dam L L, Lawrence L L, Badger State L L, etc., have they not?

Ans. They have.

X Q. 1577. They have been respectively invoiced to your house and invoiced out of your house as Lawrence L L, Aurora L L, Beaver Dam L L, etc., have they not?

Ans. They have.

Redirect examination:

R. D. Q. 1578. Can you tell from the words Aurora, Beaver Dam, Housewife, Indian, or Badger State where or by whom such sheetings were made?

Ans. I can.

R. D. Q. 1579. How can you tell?

Ans. From experience and knowledge gained by while employed in the dry-goods business.

R. D. Q. 1580. Does the word Aurora or Beaver Dam of itself, or either of the other words by itself, tell you where or by whom such sheetings were made?

Ans. They do not.

R. D. Q. 1581. Then your knowledge on this subject must be derived from some other source?

Ans. It is.

R. D. Q. 1582. During the last five years since you have been handling other L L's than the Lawrence, should one ask for
250 L L sheetings would you not think of the Lawrence?

Ans. Yes; together with others we may have.

Recross-examination by Mr. SLOAN:

Re-X Q. 1583. Do you handle any other grade or weight of cotton made by the Lawrence Company than the 4-yard?

Ans. We do not.

Re-X Q. 1584. Would not the brand of the Aurora, Beaver Dam, and other brands stamped upon the cotton you handle indicate to you conclusively that they were not manufactured by the Lawrence manufactory?

Ans. It would.

Re-X Q. Did you ever handle the Atlantic L L?

Ans. We have not.

Re-X Q. 1586. Do you know whether there is a cotton sheeting manufactured by the Atlantic Mills that are stamped "L L;" does that knowledge come to you in your trade?

Ans. I do know it.

Re-X Q. 1587. Do you know how long the Badger State L L has been on the market?

Ans. I could not state.

CHARLES O. KRIEGER.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Subscribed and sworn to before me this 6th day of July, 1886.
[SEAL.] HOWARD H. CLEVELAND,
Notary Public, Ramsey County, Minnesota.

Adjourned to Minneapolis.

MINNEAPOLIS, *July 6th*, 1886—11.30 a. m.

Met, pursuant to adjournment, at St. Paul. Same parties
251 present as before, except Mr. Sloan being absent.

It is stipulated and agreed that if J. P. Simpson were produced and sworn he would testify, in substance, as follows:

That he has been in the dry-goods business for 24 years; for the past four months he has been a member of the wholesale dry-goods firm of Ingram, Oleson & Co., of Minneapolis; that for four years prior to said time he was with the house of Auerbach, Finch & Van Slyck, of St. Paul; and for fifteen years prior thereto was with the firm of Bowen Bros., of Chicago.

That for the past 12 years he has been familiar with coarse brown sheetings known as L L sheetings.

That in the trade it means 4-yard goods, and its general significance means in the trade Lawrence L L.

That should one order L L sheetings he would be understood to mean that he meant Lawrence L L's; that if we had such sheetings we would fill such orders with Lawrence L L's, but if not, would fill such orders with Badger State L L's.

That his house only handles Lawrence L L's and Badger State L L's.

That the firm of Auerbach, Finch & Van Slyck handle Lawrence L L's and other brands of L L's; that the firm of Bowen Bros., of Chicago, handle Lawrence L L's.

That the other L L's can be purchased cheaper than the Lawrence L L's.

That Mackey, Nesbitt & Co., of Evansville, Indiana, made an L L sheeting specially for his house, which are branded Minneapolis L L.

Cross-examination:

That on cross-examination said witness would state as follows:

That the Lawrence L L sheeting has always been known as Lawrence L L.

252 That the Lawrence L L, Badger State L L, Aurora L L, and Beaver Dam L L, and the other brands of L L with which he is acquainted have always, so far as he knows, been known and designated from each other as Lawrence L L, Aurora L L, Beaver Dam L L, etc., respectively, and that they have been invoiced in and out of the respective houses named by the above designation.

That, so far as his knowledge goes, it is understood that the L L on said goods indicates the grade of such goods, and that the words

Lawrence Mills, Beaver Dam, Aurora, etc., indicate the name of the respective makers; that it is not understood that L L stamped on the Aurora, Beaver Dam, and the other brands of L L goods indicates that they were made at the Lawrence Mills.

W. G. RAINEY,
Solicitor for Complainant.
J. M. DICKINSON,
Solicitor for Defendant.

It is further stipulated and agreed that were Mr. —— Muer produced and sworn he would testify, in substance, as follows:

That he is a salesman of the domestic department of the retail dry-goods merchant firm of William Donaldson & Co., at Minneapolis; that he understands should one inquire of him for L L sheetings to mean sheeting 36 inches wide made by the Lawrence Mills; that he has had no experience or familiarity with any other sheeting.

On cross-examination, that he would testify, in substance, the same as the above stipulation of J. P. Simpson.

Minneapolis, July 6, 1886.

W. G. RAINEY,
Solicitor for Complainant.
J. M. DICKINSON,
Solicitor for Defendant.

253 *Depositions Taken on this the 26th day of July, 1886, at the Offices of Raymond & Rainey, Chicago, Illinois.*

Present: W. G. Rainey, representing the complainant; J. M. Dickinson, representing the Tennessee Manufacturing Company; D. C. Givens, representing the Evansville Cotton Manufacturing Company; N. J. Aldrich, representing the Aurora Cotton Mills.

Said depositions being taken in pursuance of notices heretofore served upon the solicitors of the respective defendants, but by agreement of the parties it is understood that either of said witnesses may be examined upon any day covered by said notices that may be convenient, or any other witness whose name shall be furnished to the solicitors for the defendants, not embraced in said notices, the same to be furnished, however, to the said solicitors during the day, July 26th.

It is further stipulated that all formalities as to the caption and certificate are waived, and that the depositions when taken may be left in the possession of the solicitors for the complainant, to be by them retained for the purpose of being printed.

The said depositions to be taken before P. H. T. Mason, a notary public in and for the county of Cook, in the State of Illinois.

ROBERT HILL, being first duly sworn, in answer to interrogatories propounded to him by Mr. W. G. RAINEY, deposed as follows:

Q. 1588. Please state your name, age, residence, and occupation, and how long you have been so engaged.

Ans. Robert Hill; 46; dry-goods jobber; been so engaged 20 years; residence, Chicago, Illinois.

Q. 1589. Where have you been so engaged during these twenty years, and with what concern?

Ans. In Milwaukee, Wis., under the firm name of Sexton, Brother & Co., for five years; in Milwaukee, Wis., under the
254 name of Storm & Hill or Storm, Hill & Co., for nine years, and in Chicago, Illinois, under the firm name of Storm & Hill, for six years.

Q. 1590. During this period of time have you been a member of those respective firms?

Ans. Yes; for seventeen of the twenty years.

Q. 1591. State whether during these 20 years said firms have handled brown sheetings, and among others the classes or grades known as 2.85, 4-yard sheetings, and 5-yard sheetings; and, if so, please state whether such grades are known in the trade as distinctive classes and grades, one from the other.

Ans. We have handled all grades of sheeting, and sheetings generally may be classed as 2.85, usually called standard, 4-yard, and 5-yard goods, but there are intermediate weights.

Q. 1592. Please state whether or not these several grades or classes of sheetings are in competition, one with the other, in the market.

Ans. Assuredly.

Q. 1593. How may I understand your answer to the last question—that the 4-yard sheeting is in competition with the 5-yard?

Ans. Certainly not. Standard sheetings compete with other standards, 4-yard sheetings with other 4-yard sheetings; 5-yards with other 5-yards, so-called.

Q. 1594. Can you mention the names by which they are known in the trade of the different kinds of 4-yard sheetings? If so, please give them to us.

Ans. I will give you the names of Lawrence L L, Enterprise E E, Tuckahoe, Aurora L L, Beaver Dam L L, Evansville L L, the L L's made by the Nashville Mills, by the Crescent Mills at New Orleans, by the Janesville Manufacturing Company, and all the several L L's made by those mills and other mills under private stamps and names for different jobbers in this vicinity.

255 Q. 1595. Do you know of any 4-yard goods besides those stamped L L that are in the market?

Ans. Besides those that I have mentioned there is the Atlantic P, and there has been (I don't know whether it is made now or not) Agawam F.

Q. 1596. For how long have you known 4-yard sheetings stamped with L L?

Ans. For twenty years.

Q. 1597. During this period of time what would you understand one to mean were he to ask you for L L sheetings?

Defendants except to the foregoing question as calling merely for the individual understanding of the witness and not for proof of any fact or of any custom or usage of trade as to which he has qualified himself to speak.

Mr. RAINEY: I will waive the question for the moment.

Q. 1598. For the past twenty years in what portion of the country have you been familiar with the dry-goods trade?

Ans. In the West and Northwest, including the States of Illinois, Iowa, Nebraska, Dakota, Minnesota, and Wisconsin, with the western half of Michigan.

Q. 1599. State whether or not the houses with which you have been connected have sold to the retail trade in those respective States during this period of time the different grades of brown sheetings that you have mentioned.

Ans. With the exception of such as I have spoken of as private brands, we have sold all of them.

Q. 1600. Can you state, then, that you are personally familiar with the retail dry-goods trade in these respective States?

Ans. I think I am reasonably familiar with the retail trade of these respective States.

Q. 1601. During this period of time please state what significance to you would be conveyed to your mind should one inquire of you for L L sheetings.

256 Ans. A sheeting weighing four yards to the pound, 56 x 60 as regards warp and filling, and based upon Lawrence L L or Lawrence L L itself.

Q. 1602. Please state whether or not the houses with which you have been so connected have received orders for so many pieces of bales of L L sheetings.

Ans. We have, and do daily.

Q. 1603. When such an order is so received what do you understand it to call for?

Ans. I would understand, if a customer calls simply for double L sheeting, that it was his intention to order Lawrence double L.

Q. 1604. So far as you know, how have such orders been filled?

Ans. Always with Lawrence L L when I had them in stock.

Q. 1605. Please give the names of any other brands of L L sheetings that you have handled, if any.

Ans. I have handled Appleton L L, Wisconsin L L, Lake Michigan L L, Shawmut L L, Atlantic L L.

Q. 1606. Can you state by what mill these several L L's have been manufactured? And, if so, give us their names.

Ans. I presume you mean the L L's in my last answer. The Appleton L L's are made by the Appleton Manufacturing Company of Massachusetts; the Wisconsin L L's by the Beaver Dam Cotton Manufacturing Company; the Lake Michigan L L's by the Evansville Cotton Manufacturing Company; the Shawmut L L by the Lawrence Manufacturing Company, they being the seconds of Lawrence L L's; and the Atlantic L L, a so-called 5-yard cotton, manufactured by the Atlantic Mills, Lawrence, Mass.

Q. 1607. Is the Atlantic L L a 4-yard goods?

257 Ans. It is not; it weighs about five yards, is of different texture, and differently put up from any of the other L L's that I know; it is called in the dry-goods vernacular a fine cotton, while Lawrence L L, Atlantic P, and others are called heavy cotton.

All of the foregoing answer after the words "five yards" is excepted to as not responsive to the question and as being volunteered by the witness.

Q. 1608. Will you please state whether or not the Atlantic L L sheetings came in competition in the trade with the other L L sheetings you have mentioned or with the 4-yard goods? Should you answer no, state why not.

Ans. It does not come into competition with the other L L's simply because there is a difference in weight, in texture, in value, and in the manner in which it is put up.

Q. 1609. What have you to say about the popularity of the trade of L L sheetings made by the Lawrence Manufacturing Company?

Ans. They are now and always have been the leading cotton in my own as well as, to my knowledge, all other jobbing stock.

Q. 1610. To what is this popularity attributed, in your opinion?

Ans. To its general excellence and the fact that it fills, and well fills, the retail demand.

Q. 1611. What is the distinctive feature on the brand of such goods?

Ans. A bull's head at the upper part, the caption of name of the mill, with the letters L L printed under.

Q. 1612. By which of these distinctive features does the trade generally speak of such goods?

Ans. By the letters L L.

Q. 1613. What value, in your opinion, have these letters as a trade-mark?

258 Ans. I should say they are a very valuable consideration to the Lawrence Manufacturing Company and an indication to the jobber or retailer of the virtue and excellence of the fabric so stamped.

Q. 1614. Please state whether or not the symbol or trade-mark L L on such sheetings has assisted your respective firms in selling the same; and, if so, to what extent.

Ans. They have assisted largely in the sale of the goods, and we have sold large quantities of the goods by reason of the stamp L L.

Q. 1615. What assistance, if any, has it been to the jobbing trade in bringing to such trade custom or business from retail merchants, and how do you account for such assistance, if there has been any?

Ans. It has been a synonym for excellency in texture and integrity of weight to such an extent as to make it the most popular sheeting sold out of our stock.

Q. 1616. What I desire to know is whether the jobber has been enabled to draw to his house other business by reason of having these Lawrence goods in stock?

Ans. In my own case I can say that the presence in my stock has increased my business.

Q. 1617. You have mentioned above that you have the Wisconsin L L, made by the defendant, The Beaver Dam Cotton Mills; please state whether they are made on your order; and, if so, for what purpose.

Ans. Wisconsin L L is made for me, or is so stamped for me as my private brand, and is for the purpose of meeting the competition created by other brands of L L, which are simply, in my estimation, counterfeits of Lawrence L L.

Defendants except to all of the foregoing answer after the words "brands of L L" as being not responsive to the question and as volunteered by the witness.

259 Q. 1618. Please explain to us what you mean by your answer to the last question, with regard to your desire to meet the competition created by other brands of L L?

Ans. Nearly every house in the West and Northwest adopts a private stamp on one or other of the 4-yard cottons made by the different mills, and stamps them L L or have them stamped L L, to the end that competition with the Lawrence L L may be made, and is made a matter of personality with every jobbing house.

The foregoing question and answer are excepted to by the defendants as being matters *inter alias* and incompetent and irrelevant.

Q. 1619. What part, if any, does the L L sheetings made by the Lawrence take in fixing the market price of such goods, if you know?

Ans. A very important part, in that it is the index of the price at all times of all the L L's, and that all the other L L's follow the lead of the Lawrence L L.

Q. 1620. What do you know about the jobbing trade selling other L L's in preference to the Lawrence?

Ans. It has sometimes been true—in fact often is true—that in the over-production of L L sheetings or 4-yard sheetings, within the past five years especially, that better trade could be made for the Western and Southern L L's than could have been made for Lawrence L L's, and in that case we have sometimes given Western and Southern L L's so much preference that we have removed the Lawrence L L's from our stands and counters, keeping them out of sight and selling in preference the Western and Southern goods.

Q. 1621. Please state whether or not this has been done to the detriment of the sale of L L's made by the Lawrence Company.

Ans. The doing of the thing in my last answer stated has had that effect.

260 Q. 1622. Can you give the names of the mills by which the L L's have been made that your houses have sold in preference to the L L's made by the Lawrence Company, as indicated in the answer to Q. 1620?

Defendants except to the foregoing question as irrelevant and incompetent, because it is not shown that either of said mills were parties to the practices to which the question alludes.

Ans. Yes; we have sold the Badger State and Beaver Dam goods in preference to others and in preference to Lawrence L L.

Q. 1623. Have you ever sold any such L L's in the manner indicated in your answer to Q. 1620, made by the Aurora Cotton Mills or by the Evansville Cotton Manufacturing Company?

Ans. We have, but to a very small extent.

Q. 1624. Have you ever sold such goods in the manner indicated, made by the Tennessee Manufacturing Company?

Ans. No.

Q. 1625. Do you know of your own knowledge whether any officer or authorized agent of either the Beaver Dam Cotton Mills, the Aurora Cotton Mills, or the Evansville Cotton Manufacturing Company knew that you or any other jobbing house held such L L's in the manner indicated by you in your answer to Q. 1620?

Ans. Not of my own knowledge.

Q. 1626. In purchasing other L L's than the Lawrence what do you know about the same being sold on memorandum?

Ans. We have bought Lawrence L L's on memorandum, have bought Badger State on memorandum, have bought Beaver Dam L L on memorandum, but none of the others.

Q. 1627. What is meant by buying such goods on memorandum?

Ans. By contracting to take them into possession, the price to be named at some future time after the delivery.

261 Q. 1628. How is such future price fixed?

Ans. Usually by the manufacturer or his agent, with the consent of the buyer.

Q. 1629. Is there any standard that regulates such prices in the market; and, if so, what?

Ans. The only standard of which I know is that of supply and demand at the time it is proposed to have such memorandum goods charged up.

Q. 1630. State whether or not the price fixed by the Lawrence Company on its goods has anything to do in fixing the price at which other L L's are charged up when sold on memorandum.

Ans. The price made by the Lawrence Manufacturing Company on their L L sheetings is usually followed by other manufacturers.

Q. 1631. State whether or not the use of L L on Atlantic goods has the same significance to the trade in any respect; and, if so, in what respect as the use of L L on a 4-yard goods.

Ans. It cannot by any possibility have any significance as regards value or texture, because it is different in weight, different in texture, and different in manner of being put up.

Q. 1632. Are these differences so known and recognized by the trade?

Ans. So far as Atlantic L L is known these differences are known to the trade. If I might be allowed to qualify that I would say that the production of the Atlantic L L is exceedingly small and it is not a common factor in general jobbing stock. The production is very small.

Defendants except to all of the foregoing answer following the words "known to the trade," as being irrelevant and incompetent and volunteered by the witness.

Q. 1633. You have stated in one of your answers above
262 that your house frequently receives orders for L L sheeting, and that such order is understood by your house to mean

Lawrence goods. Now, will you please state whether you have ever filled such orders with L L sheetings other than the Lawrence goods?

Ans. We have.

Q. 1634. With what L L's have you filled such orders?

Ans. With any of the other L L's.

Q. 1635. Will you please state whether or not, in your opinion, the use of the letters L L on 4-yard goods by the defendants would tend to deceive the public as imitations of the goods of the Lawrence company, and also whether or not the continued use by the defendants of the letters L L on such sheetings would have a tendency to deceive? You may give any facts or reasons you may have for giving any opinion you may express, and if your answer should be in the affirmative you may state what part of the trade has been or would be so deceived.

Ans. I believe that the trade has in many cases been deceived, and that the use of the letters L L on other sheetings has led retail dealers into the belief that they were buying Lawrence L L.

Cross-examination by Mr. J. M. DICKINSON:

X Q. 1636. This impression or deception would be produced by the Wisconsin L L, which you have made and sell, equally as much as by any of the other L L's, would it not?

Ans. It would, most assuredly.

X Q. 1637. Are you still having the Wisconsin L L made and putting it on the market?

Ans. We are.

X Q. 1638. What is the brand on the L L goods made by the Tennessee Manufacturing Co.?

Ans. I do not know.

X Q. 1639. How long have the goods made by the Atlantic Mills and stamped L L been in the trade?

263 Ans. As long as I can remember, with intervals between their production. At one time I recollect they were not made for some years.

X Q. 1640. You, then, have known of the Atlantic L L in the trade, off and on, with intervals you speak of, for upwards of twenty years?

Ans. I might say that my individual handling of these goods L L and all other sheetings covers a period of about fifteen years. The other five years of the twenty during which I have been engaged in the dry-goods business did not require me to handle the goods. My acquaintance with Atlantic L L covers a period of about fifteen years.

X Q. 1641. I understand by that that you personally have handled it, off and on, for fifteen years. Is that correct or not?

Ans. I have personally known of the existence of Atlantic L L and the fact that it has been offered for sale, off and on, during the past fifteen years.

X Q. 1642. Did you not, as a merchant, know prior to that time of the manufacture and existence in the trade of Atlantic L L?

Ans. Not of my own knowledge.

X Q. 1643. Did you not, prior to that time, hear it spoken of as a goods existing in the trade?

Ans. I have no present recollection of hearing it so spoken of.

X Q. 1644. What do you understand the L L branded on the Atlantic goods to indicate?

Ans. A so-called 5-yard sheeting.

X Q. 1645. Do you understand that L L means in the trade a 5-yard sheeting?

Ans. I do not.

X Q. 1646. Do you understand L L to be a trade-mark of the Atlantic Mills?

264 Ans. When on an Atlantic sheeting marked L L I have understood it to be their trade-mark for their 5-yard sheetings.

X Q. 1647. Is it understood, then, in the trade with which you are familiar that L L impressed upon goods branded Atlantic Mills was a trade-mark of that company?

Ans. I can only give the same answer that I gave before; I understand it to be their brand upon 5-yard goods.

X Q. 1648. My question called for the understanding of the trade, so far as you, from your knowledge, can speak of the understanding of the trade upon that question.

Ans. The understanding of the trade with regard to L L on Atlantic sheetings would, I imagine, be the same exactly as mine, that it was their signet or sign for 5-yard sheetings, so called.

X Q. 1649. Do you undertake to say, of your own knowledge, that they have always impressed L L upon goods weighing substantially five yards to the pound?

Ans. I have never known double L to be impressed on other Atlantic goods than those weighing five yards.

X Q. 1650. You do not undertake to say that you know that it has not been impressed upon goods of a different weight?

Ans. I do not.

X Q. 1651. Do you undertake to speak of the knowledge of the trade in this particular?

Ans. Judging the knowledge of the trade only from my own knowledge.

X Q. 1652. You only speak for yourself, then, from your own knowledge?

Question is objected to by complainants for uncertainty as confounding the witness' individual knowledge and his knowledge of the trade in general.

Ans. I am judging the trade by my own knowledge.

265 Mr. RAYMOND: Knowledge of what?

Ans. Of cotton goods.

X Q. 1653. The Lawrence L L goods have, so far as your knowledge goes, been always stamped with the image of a bull or bull's head, the words Lawrence Mills, and the letters L L, have they not?

Ans. They have.

Lawrence goods. Now, will you please state whether you have ever filled such orders with L L sheetings other than the Lawrence goods?

Ans. We have.

Q. 1634. With what L L's have you filled such orders?

Ans. With any of the other L L's.

Q. 1635. Will you please state whether or not, in your opinion, the use of the letters L L on 4-yard goods by the defendants would tend to deceive the public as imitations of the goods of the Lawrence company, and also whether or not the continued use by the defendants of the letters L L on such sheetings would have a tendency to deceive? You may give any facts or reasons you may have for giving any opinion you may express, and if your answer should be in the affirmative you may state what part of the trade has been or would be so deceived.

Ans. I believe that the trade has in many cases been deceived, and that the use of the letters L L on other sheetings has led retail dealers into the belief that they were buying Lawrence L L.

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Ans. I might say that my individual handling of these goods L L and all other sheetings covers a period of about fifteen years. The other five years of the twenty during which I have been engaged in the dry-goods business did not require me to handle the goods. My acquaintance with Atlantic L L covers a period of about fifteen years.

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Ans. I have personally known of the existence of Atlantic L L and the fact that it has been offered for sale, off and on, during the past fifteen years.

X Q. 1642. Did you not, as a merchant, know prior to that time of the manufacture and existence in the trade of Atlantic L L?

Ans. Not of my own knowledge.

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Ans. I do not.

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Ans. I can only give the same answer that I gave before; I understand it to be their brand upon 5-yard goods.

X Q. 1648. My question called for the understanding of the trade, so far as you, from your knowledge, can speak of the understanding of the trade upon that question.

Ans. The understanding of the trade with regard to L L on Atlantic sheetings would, I imagine, be the same exactly as mine, that it was their signet or sign for 5-yard sheetings, so called.

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Ans. I have never known double L to be impressed on other Atlantic goods than those weighing five yards.

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Ans. I do not.

X Q. 1651. Do you undertake to speak of the knowledge of the trade in this particular?

Ans. Judging the knowledge of the trade only from my own knowledge.

X Q. 1652. You only speak for yourself, then, from your own knowledge?

Question is objected to by complainants for uncertainty as confounding the witness' individual knowledge and his knowledge of the trade in general.

Ans. I am judging the trade by my own knowledge.

265 Mr. RAYMOND: Knowledge of what?

Ans. Of cotton goods.

X Q. 1653. The Lawrence L L goods have, so far as your knowledge goes, been always stamped with the image of a bull or bull's head, the words Lawrence Mills, and the letters L L, have they not?

Ans. They have.

X Q. 1654. These several 4-yard L L goods which you have mentioned are generally known in the trade and distinguished as Lawrence L L, Aurora L L, Beaver Dam L L, etc. Is this or not correct?

Ans. It is.

X Q. 1655. The Lawrence L L sheetings are invoiced to your house by the selling agents of said mills generally as Lawrence L L, are they not?

Ans. I think they are simply invoiced as L L sheetings with the marginal mark of "L. M. C.;" not invoiced as Lawrence L L.

X Q. 1656. What do the letters "L. M. C." indicate?

Ans. To me Lawrence Manufacturing Company.

X Q. 1657. How are the Shawmut L L's invoiced to you?

Ans. I am not positive, but I think I am correct when I say that they are billed as L L sheetings, diamond S in the margin.

X Q. 1658. The questions are put in the present tense. Now, have those goods respectively always been invoiced to you in the manner you have designated?

Ans. I think they have been so invoiced.

X Q. 1659. From whom do you now and have you heretofore made your purchases of Lawrence L L's and Shawmut L L goods?

Ans. From George C. Richardson & Co., Smith, Hogg & Gardner, and Townsend & Yale, the selling agents of the Lawrence Manufacturing Co.

266 X Q. 1660. Is the Shawmut L L equal in virtue and excellence to the Lawrence L L; and, if so, does it always command the same price?

Ans. The Shawmut L L is not supposed to be equal in value to the Lawrence L L, and it is usually sold at a difference of one quarter of a cent below the Lawrence L L.

X Q. 1661. Then, in point of virtue and excellence, it is inferior?

Ans. It has always been supposed by the trade to be what is called the seconds of the Lawrence L L, or the mill run, lighter in weight sometimes, stained, perhaps, and not perfect in construction.

X Q. 1662. Then, in virtue and excellence, it is inferior to the Lawrence L L, is it not?

Ans. It is so regarded.

X Q. 1663. You spoke of the question of price. Is that not regulated by competition, and do not sometimes the other L L goods undersell the Lawrence, and so force a reduction in the price of the Lawrence L L?

Ans. The price is not regulated so much by competition, or rather has not been regulated by competition so much, as by supply and demand.

X Q. 1664. Is it not a fact that other makers of L L goods have at times reduced prices and forced the Lawrence Company to reduce its price?

Ans. I am not aware of any instance where the Lawrence Manufacturing Co. has been forced to reduce its price by the action of other mills making L L cottons.

X Q. 1665. Has not the manufacture of L L cotton by these other mills had the effect of reducing the price on that line of goods?

Ans. There have been heretofore a larger quantity of L L cottons produced than there has been demand for, and the reduc-
267 tion of the price has been enforced by that cause more than by any other.

X Q. 1666. Have you ever been sued or your company or any one else you know of for making and branding the Wisconsin L L?

Ans. We do not make or brand Wisconsin L L. I might add to the answer the Beaver Dam Manufacturing Co. brand Wisconsin L L for us, and I understand them to be impleaded in these suits.

X Q. 1667. For making and branding goods with Wisconsin L L; is that your understanding?

Ans. For making and branding goods with the stamp L L. I am not aware that Wisconsin L L is stated in the proceedings against them.

X Q. 1668. Have the Lawrence Mills or their selling agents ever put a private brand for you on any of their manufacture of 4-yard goods?

Ans. No. On the other hand, they have declined to do it upon our request to brand them with our private brand.

All of said answer after the word "no" is excepted to as not responsive and as being volunteered by the witness.

X Q. 1669. Who owns the brand with which the Wisconsin L L's are branded?

Ans. The Beaver Dam Cotton Mills.

X Q. 1670. Who had it made?

Ant. The Beaver Dam Cotton Mills.

X Q. 1671. At your instance?

Ans. At our request.

X Q. 1672. Are not all the different grades of cloth manufactured by the Lawrence Mills and put upon the market as their own product branded Lawrence Mills, so far as your knowledge goes, with the exception of the Shawmut L L?

Ans. I am not aware of any other brand put upon the Lawrence Mills production than Lawrence, excepting the Shawmut.

268 X Q. 1673. Do not manufacturers of cotton goods generally use letters of the alphabet to denote and distinguish the different grades of goods made by them?

Counsel for complainant objects to this question for the reason that it is improper cross-examination; that as the question is put it is irrelevant and immaterial; that it concerns parties and matters not parties to nor a part of the present issues, and solely for the purposes of limiting this examination to the present issues the witness is instructed not to answer the question.

X Q. 1674. Will you answer the foregoing question, or do you decline?

Ans. The manufacturers of cotton goods use letters of the alphabet, symbols, and devices of a great many sorts to designate articles of their product.

X Q. 1675. You have failed to answer the question, your answer not being responsive. Will you answer the question, or do you decline to answer?

Same objection and same instructions to witness.

Ans. It seems to me that I have answered the question. I will say again that letters, signs, and symbols are used for that purpose. One manufacturer uses a bull's head, another a tiger, and I think of another who uses a pyramid; another a sphinx. One uses the letter A and another uses the letter Z. Some use combinations of letters, all having their relative value as marks, brands, or signets in our trade.

X Q. 1676. In your last answer you say, "Are used for that purpose." Explain what purpose you mean.

Ans. As designating marks, marks indicating value, quality, or excellence to the trade.

X Q. 1677. Which one uses the bull's head?

Ans. The Lawrence Manufacturing Co. has the bull's head.

X Q. 1678. Do you understand that the bull's head indicates the grade of the goods?

269 Ans. Not in the case of the Lawrence Manufacturing Co.

X Q. 1679. Then what does indicate the grade of the Lawrence Manufacturing Co.?

Ans. The letters L L.

X Q. 1680. Were you subpœnaed to testify in this case?

Ans. No.

X Q. 1681. Did you not give an affidavit on the preliminary motion in the case of the Lawrence Manufacturing Co. against the defendant, The Aurora Cotton Mills?

Ans. I did.

X Q. 1682. In looking at the two brands what is the distinguishing difference between the Atlantic L L and the Lawrence L L?

Ans. The two L's upon the Atlantic goods are long, slim letters within a smaller compass than that occupied by the larger block letters of the Lawrence L L.

X Q. 1683. Is that all the difference?

Ans. That is all.

X Q. 1684. Has not one on it a bull's head and the words "Lawrence Mills" and the other the words "Atlantic Mills?"

Ans. Yes, sir.

X Q. 1685. The Atlantic Mills has been a well-known company in the trade some time, has it not?

Ans. Yes, sir.

X Q. 1686. The Atlantic Mills is a manufacturing company, and the name Atlantic Mills stamped upon cotton goods was well known in the trade long before you ever knew of any of their goods in the trade stamped L L, was it not?

Ans. No, sir.

X Q. 1687. How long have you known the Atlantic Mills L L goods?

Ans. Not longer than fifteen years. I have known Atlantic A and Atlantic P longer than that—say twenty years.

X Q. 1688. Repeat X Q. 1686, substituting the word "Lawrence" where the word "Atlantic" occurs.

Ans. That is true.

270 X Q. 1689. The words "Lawrence Mills" stamped upon goods branded L L were understood by the trade to denote that the goods were the manufacture of the Lawrence Mills, was it not?

Ans. It was.

Redirect examination by Mr. W. G. RAINEY:

R. D. Q. 1690. You have been asked in the cross-examination how the Lawrence L L sheetings were invoiced to you. Will you please state how you order such goods?

Defendants except to the individual practice of witness, he not being a party to the matters at issue.

Ans. I would order them as Lawrence L L.

R. D. Q. 1691. Have you ever ordered them simply as so many bales of L L sheetings?

Ans. Yes, sir.

R. D. Q. 1692. You have stated in your cross-examination, in answer to X Q. 1679, that the letters L L indicate the grade of the Lawrence Manufacturing Co. Will you please state what you mean by your answer to that question?

Ans. That double L indicates the quality usually called the Lawrence double L. The Lawrence Co. makes other grades of sheeting. I did not understand that question.

R. D. Q. 1693. Does the signet L L indicate only a particular grade of sheeting?

Ans. It does indicate only a single grade of sheeting, viz., their 4-yard goods.

R. D. Q. 1694. To whom have you reference when you use the word "their" in your last answer?

Ans. The Lawrence Manufacturing Co.

R. D. Q. 1695. You have been questioned on cross-examination as to whether you are the Robert Hill who made an affidavit in the case against the Aurora Cotton Mills. Now, will you please state whether or not the statements made in said affidavit were true

271 at the time they were made, so far as your knowledge went, and are you willing now to make the same or a copy thereof a part of your deposition and will you do so?

Defendants except to the question as incompetent and except to the admissibility of said affidavit in toto as a part of the witness' deposition.

Ans. The facts stated in that affidavit are true now, as they were then, and I make it a part of my present testimony.

Answer objected to by defendants for the same reason as stated in the objection to the question.

Recross-examination by Mr. J. M. DICKINSON:

Re-X Q. 1696. The parties from whom you ordered L L sheetings by the simple designation of L L never handled any other L L sheetings, did they?

Ans. I never knew them to handle any other than Lawrence and Shawmut L L.

ROBERT HILL.

At this point the further examination of witnesses was adjourned to to-morrow, Tuesday, July 27, 1886, at 10 o'clock a. m.

CHICAGO, ILLINOIS, *July* 27, 1886.

Examination of witnesses resumed, pursuant to adjournment, this 27th day of July, 1886, at 10 o'clock a. m.

Present: Same parties as before.

W. R. MACKENDRICK, a witness produced on behalf of the complainant, being first duly sworn, in answer to interrogatories propounded to him by Mr. W. G. RAINEY, deposes and says:

Q. 1697. State your name, age, residence, and occupation.

Ans. W. R. MacKendrick; 37 years of age; residence, Chicago, Illinois; occupation, buyer of cotton for Schlesinger & Mayer.

272 I am buyer of imported and domestic cotton goods. Schlesinger & Mayer is one of the principal retail dry-goods houses in the city—at No. 129 State street.

Q. 1698. How long have you been with this house? And, if in any other capacity, please state what.

Ans. A little over six years; the same capacity the entire time.

Q. 1699. Prior to your going into the employ of Schlesinger & Mayer, with whom were you employed and in what capacity?

Ans. One year prior to that with A. T. Stewart & Co., of this city. I was at abstract work in the office.

Q. 1700. For whom were you employed prior to your employment with A. T. Stewart & Co., and in what capacity?

Ans. Three years with Carson, Pirie & Co.; prior to that, by A. T. Stewart & Co., in their retail department, on the west side, as buyer of domestic goods.

Q. 1701. During these past ten years, please state whether you have been familiar with buying brown muslins stamped with the letters L L?

Ans. I have.

Q. 1702. At any time during these ten years, should any one ask you about L L muslin, what significance would it carry to your mind; or, in other words, what meaning would it convey to you?

Ans. That of medium-weight, coarse, brown four-quarter sheeting, known as four-yard cloth.

Q. 1703. Would it convey to your mind anything else?

Ans. Well, yes, it would. I don't know how I could answer that question. It would convey certain brands of sheeting.

Q. 1704. What principal brand of sheeting would it convey to your mind, if any?

273 Ans. Prominent in my mind would be Lawrence L L, four-quarter brown.

Q. 1705. How long have you been handling L L sheetings of the Lawrence brand?

Ans. During my residence in Chicago, with the exception of the years that I was at office work at Stewart's; I was not handling it that year.

Q. 1706. Have these L L sheetings been popular with your customers and your trade?

Ans. They have.

Q. 1707. Are they well known to your customers; if so, how are they designated by your customers?

Ans. I can't say that as a rule the brands are particularly well known to the retail trade.

Q. 1708. Do your customers ever ask for this particular brand of goods; and, if so, how?

Ans. In some cases they do, and inquire for the Lawrence L L.

Cross-examination for defendants by Mr. J. M. DICKINSON:

X Q. 1709. In your answer to Q. 1703 you say, speaking of L L, that "it would convey certain brands of sheeting." Will you please be kind enough to mention those several brands?

Ans. Atlantic L L, Albany L L, Badger State L L, and there is Pacolet L L, Aurora L L. Now, there are several others I could mention.

X Q. 1710. These several brands of four-yard sheeting are known and designated generally in the trade as Lawrence L L, Beaver Dam L L, Aurora L L, etc., are they not?

Ans. They are.

X Q. 1711. How long have you known the Atlantic L L in the trade?

274 Ans. The past nine or ten years.

X Q. 1712. This is what is generally understood to be of the grade known as 5-yard goods, is it not?

Ans. It is.

X Q. 1713. For what purpose is the Atlantic L L used by consumers?

Ans. For all purposes where a light-weight muslin is required—a light-weight fine muslin.

X Q. 1714. Could you not specify, from your knowledge, some of those uses?

Ans. I have sold it to sewing-machine companies for manufacturing purposes and also to paper-hangers. I presume they use it for spreading upon walls prior to the paper.

X Q. 1715. State whether or not you know that it is also used for sheeting and shirting and general household purposes by farming and working people and the poorer classes of people.

Objected to by counsel for complainant as not proper cross-examination, as incompetent and irrelevant, unless the witness should show that he had actual knowledge of these facts, and notice is given to the defendants that if the cross-examination is pursued on matters not brought out on direct examination it must be done as the witness for the defendants.

Ans. I will simply say that I presume it was.

Redirect examination by Mr. W. G. RAINEY (not waiving objections):

R. D. Q. 1716. Have you any actual knowledge as to the purposes for which the Atlantic sheetings are used by any of your customers, or is your testimony given upon presumption in this respect?

Ans. Presumption only.

R. D. Q. 1717. Does the Atlantic L L sheeting come in competition in the retail trade with the Lawrence L L sheeting?

275 Ans. No.

R. D. Q. 1718. Why not?

Ans. On account of much lighter weight.

R. D. Q. 1719. Is it not known to the retail trade as a distinctive class of sheeting or muslin from the Lawrence L L?

Ans. Not to the retail trade. The brand was not known to the retail trade any more than the Lawrence L L.

R. D. Q. 1720. Please explain what you mean.

Ans. In a former question I was asked if the Lawrence L L was known and inquired for by customers. I said by some it was. The same answer is applicable to Atlantic L L.

R. D. Q. 1721. My question is, Is not the Atlantic L L known to the retail trade as a distinctive class of sheeting from the Lawrence L L?

Ans. To those familiar with the brand it is.

R. D. Q. 1722. Is it not different to the eye and to the feel?

Ans. It is.

R. D. Q. 1723. The one is known to the retail trade as a light brown muslin and the other as heavy brown muslin?

Ans. I will say that the Lawrence is a medium-weight brown muslin.

R. D. Q. 1724. Then the Atlantic L L is known as a light brown muslin and the Lawrence as a medium brown muslin; is that correct?

Ans. I understand Atlantic L L to mean a light-weight, fine brown muslin and the Lawrence L L a medium-weight, coarse brown muslin.

R. D. Q. 1725. Do your customers know this distinction between these two brands of goods?

Ans. A majority do not.

R. D. Q. 1726. Should a customer ask you for a light brown muslin would you show such a customer the Lawrence L L?

276 Ans. I would first inquire, coarse or fine?

R. D. Q. 1727. Should a customer ask you for a fine brown

muslin would you show such a customer the Atlantic L L or the Lawrence L L?

Ans. The Atlantic L L for a fine light weight.

R. D. Q. 1728. Which other medium brown muslins besides the Lawrence have you handled stamped with L L?

Ans. Badger State L L, Beaver Dam L L, Atlantic LL, Pacolet L L, Albany L L, and others.

R. D. Q. 1729. My question asked you what medium brown muslin you have handled besides the Lawrence, and you have answered Atlantic L L; is that correct?

Ans. No. I mentioned Atlantic, overlooking the medium weight.

R. D. Q. 1730. Before you became familiar with the Badger State L L, the Beaver Dam L L, and Aurora L L, and Albany L L, should one have asked you for L L sheetings what would you have understood him to inquire for?

Ans. Naturally, Lawrence L L.

Recross-examination by Mr. DICKINSON:

Re-X Q. 1731. Why not Atlantic L L also; you knew that at the same time, did you not?

Ans. Simply because the weight of the Lawrence L L is more adapted for general purposes.

Re-X Q. 1732. You knew the Atlantic L L at the same time?

Ans. Yes, sir.

Re-X Q. 1733. Some people used the Atlantic and some the Lawrence, did they not?

Ans. They did.

Re-X Q. 1734. Then did it necessarily imply that a person asking simply for L L sheeting meant Lawrence and not Atlan-
277 tic, and may it not as well have been used to mean Atlantic as Lawrence?

Ans. Yes; I understand it in that way to mean one as well as the other.

Re-X Q. 1735. Persons buying brown sheeting for household and general purposes differ in their desires, do they not; some preferring the lighter weight, such as the Atlantic, and others preferring the medium weight, such as the Lawrence?

Ans. They do.

Re-X Q. 1736. Now, then, when customers having different wishes in respect of the different grades of sheeting come to buy and take the lighter in preference to the medium, or the medium in preference to the lighter, then in such cases the two grades do compete, do they not?

Ans. I don't think they do.

Re-X Q. 1737. Suppose a customer should come into your store and examine Atlantic L L sheeting for the purpose of using it for sheets and shirting and general household purposes, and should upon comparing it with the Lawrence determine that the one or the other in weight and texture met their desire better than the other, then would not the goods in such case have competed with each other for the sale made to such customer?

Ans. As I understand competition, I think not.

Re-X Q. 1738. Then in case such a person, for the same general use, preferred in some instances or some seasons the lighter to the heavier, or the heavier to the lighter, and should purchase the one in preference to the other, you do not mean to affirm that in such instances there is no competition, do you?

Ans. I don't think that the province of the one sheeting is the same as the other under any circumstances.

Re-X Q. 1739. And yet they are used by different persons and possibly by the same persons in many instances for the same general purposes, are they not?

278 Ans. The same general purposes that all brown sheetings are used.

W. R. MacKENDRICK.

O. J. ISENSEE, being first duly sworn, in answer to interrogatories propounded to him by Mr. W. G. RAINEY, deposes and says:

Objection being made by the defendants to the examination of Mr. Isensee for the reason that no notice had been given, his examination was postponed by complainant.

Complainant's counsel states that, in the confusion on adjournment yesterday, he omitted to give the defendants' counsel the names of other witnesses than those noticed, and here gives the names of said witnesses, whom complainant's counsel has interviewed and expects to examine: H. E. Hancke, P. F. Ryan, C. A. Teague, Patrick Berkery, R. Haskett, O. J. Isensee, Charles Hartman, and Robert Geister; that said witnesses will be produced and examined on the days following Monday, August 2d, 1866, before P. H. T. Mason, a notary public in and for the county of Cook, in the State of Illinois, as rapidly as the same can be conveniently produced.

The further examination of witnesses was here adjourned to 2.30 o'clock p. m.

Met pursuant to adjournment at 2.30 o'clock p. m.

Present: Same parties as before.

CHARLES G. SLADECK, a witness produced on behalf of the complainant, being first duly sworn, in answer to interrogatories propounded to him by Mr. W. G. RAINEY, deposes as follows:

Q. 1740. Give your name, age, residence, and occupation.

Ans. Charles Sladeck; 21; residence, Chicago, Illinois; occupation, clerking at Mandel Brothers, retail dry-goods merchants at Chicago, and am in the linen department and assistant in selling domestics.

279 Q. 1741. Are you familiar with and have you sold while with Mandel Brothers brown sheetings or muslins stamped with L L?

Ans. Yes; Lawrence L L is the only thing we handle.

Q. 1742. How are such muslins asked for by your customers?

Ans. Double L.

Q. 1743. What do you understand them to mean when they ask for double L?

Ans. The Lawrence.

Cross-examination by Mr. DICKINSON:

X Q. 1744. How long have you been handling Lawrence L L—you personally?

Ans. Eight years.

X Q. 1745. Your experience in selling L L sheeting is confined to that brand, is it not?

Ans. Yes, sir.

C. G. SLADECK.

H. L. PINNEY, being first duly sworn, deposes and says:

Q. 1746. State your name, age, residence, and occupation.

Ans. H. L. Pinney; age, 48; residence, Chicago, Illinois; occupation, dry-goods salesman for Marshall, Field & Co. They are jobbers of dry goods.

Q. 1747. Do you know how this house, Marshall, Field & Co., ranks in the jobbing trade?

Ans. I think they rank No. 1 in Chicago and in the United States, too.

Q. 1748. How long have you been with this house and in what capacity?

Ans. I have been with them twenty-one years, and most of the time as salesman.

Q. 1749. During this time have you handled or sold sheetings stamped L L?

Ans. I have.

Q. 1750. Into what States does the trade of this house reach in selling such brown sheetings?

280 Ans. All the Western States and some of the Southern States.

Q. 1751. Are you familiar with the trade in these several States?

Ans. I have some customers in most of the Western States.

Q. 1752. Have you charge of any special department; if so, what?

Ans. I have charge of no department; am engaged as general salesman.

Q. 1753. What coarse brown sheeting stamped with L L has the house of Marshall, Field & Co. been handling during the past fifteen to eighteen years?

Ans. Handled the Lawrence L L, Shawmut L L, Badger L L, Beaver Dam L L, Hoosier State L L, Pacolet L L, Atlantic L L, and Aurora L L. There is one other brand; I don't recall it now.

Q. 1754. Have you handled the Cumberland L L?

Ans. No, sir; I know of other brands of L L, but we do not handle them. I have heard of the Cumberland L L. There is the Albany L L, sold in this market.

Q. 1755. What proportionate part of Lawrence L L does your house handle as compared with other L L's?

Ans. I could not answer that question, as I do not buy the goods.

Q. 1756. Give us the best estimate you can.

Ans. My judgment would be that we sell more of the Beaver Dam and Badger State than any other L L's.

Q. 1757. How long has this been so, that you have sold more of the Beaver Dam or Badger State L L's?

Ans. I should say for the past two years.

Q. 1758. Can you give us an idea as to the number of bales of Lawrence L L's that are sold by your house per week?

281 Ans. I could not give any estimate in regard to that. Some weeks we sold more than at others.

Q. 1759. Give us an average a week for a year. What would be your best judgment?

Ans. I would not care to give any estimate on that, for I might be very far from the mark.

Q. 1760. Would you think twenty-five bales a week?

Ans. I should say we sold a good many more than that some weeks.

Q. 1761. Would it average that by the year—twenty-five bales a week?

Ans. Well, I would not like to say whether it would or not.

Q. 1762. Do they handle the Lawrence L L's at a loss?

Ans. I would not like to sell any goods at a loss.

Q. 1763. You have spoken in answer to Q. 1753, in mentioning the number of coarse brown sheetings stamped L L sold by your house, the Atlantic L L. Do you wish to be understood that the Atlantic L L is known as a coarse brown sheeting?

Ans. We have two grades of Atlantic L L. The original Atlantic L L, which we sold for a great many years, was put up in narrow folds, but we recently had a heavier one put up in wide folds.

Q. 1764. How recently have you had this heavier one put up in wide folds?

Ans. Within the past month.

Q. 1765. Would you call the Atlantic L L put up in the narrow fold a coarse brown sheeting?

Ans. I would; yes, sir.

Q. 1766. Does it come in competition in the trade with the other L L's you have mentioned?

Ans. No, sir.

Q. 1767. Why does it not?

282 Ans. A poorer quality of goods, in my judgment.

Q. 1768. Should a new customer order from you L L sheetings what would you understand him to mean and how would you fill such order?

Ans. In the absence of his designating any particular brand, if he was a stranger to me and a new customer to the house, I would presume that he wanted the Lawrence L L.

Q. 1769. Up to the time that you commenced handling these other L L sheetings should any customer order L L what would you understand him to mean?

Ans. If we had not sold any other brand I should suppose then that he meant the Lawrence L L.

Q. 1770. There would be no question about that, would there?

Ans. In my mind, there would not.

Q. 1771. Was that its general signification to the trade, so far as your knowledge goes?

Ans. There are very few customers who order goods without giving the name of the goods they want. I don't suppose that there is one in five hundred ordering L L sheetings that do not designate which brand they want.

Q. 1772. You mean whether they want the Lawrence or the Badger State or Beaver Dam or any of those you mentioned?

Ans. Yes, sir.

Q. 1773. This has become the practice only since these other L L's have been in the market; is that or not correct?

Ans. I think the practice existed before.

Q. 1774. What have you to say as to the popularity of the Lawrence L L in the trade?

Ans. They have been a popular sheeting with us and with our trade.

Q. 1775. Have you any customers that insist upon buying the Lawrence L L?

283 Ans. I have some customers that are not very well acquainted with goods who know of the brand L L sheetings from its long use who want that kind of goods and no other.

Q. 1776. You mean the Lawrence?

Ans. Want the Lawrence L L in preference to any other.

Q. 1777. Have you tried to sell such customers other L L's besides the Lawrence; and, if so, with what success?

Ans. I think, during the time I have been selling the L L's, I have had customers—some few—who asked for Lawrence L L sheeting, and we have been out of the goods and I have said to them that we had other makes of the same heft goods, but they preferred to wait and have the Lawrence L L sheeting.

Q. 1778. When you first commenced handling other L L's besides the Lawrence did you have any difficulty in putting them into the market or in getting the customers to buy them?

Ans. Had no great difficulty with judges of goods.

Q. 1779. Did the fact of their being branded with L L assist you any in selling such goods?

Ans. I think it has made it easier to introduce them from the fact that they were branded L L.

Q. 1780. To what do you attribute this fact that they were easier to introduce by being branded L L?

Ans. From the popularity of the brand of sheeting known — L L brand.

Q. 1781. What is your opinion as whether these other L L's you have mentioned have had any effect in taking away the trade of the Lawrence goods?

Ans. Well, I would think that it has reduced our sales of Lawrence L L goods by having these other goods. I know it has with

my customers for the reason that I don't sell any Lawrence L L's if I can sell those.

284 Q. 1782. But if you did not have these other L L's you would sell to your customers the Lawrence goods, would you not?

Ans. I would if they asked for them.

Cross-examination by defendants' counsel:

X Q. 1783. What is the weight of the Atlantic L L, which you say you have received within the last month, of a heavier grade than that formerly handled by you? If you cannot give the exact weight state it as approximately as you can.

Ans. I do not know its exact weight. I think it is a trifle lighter than the Lawrence L L or the Badger State or the Beaver Dam.

X Q. 1784. Is it heavier than the 5-yard goods which you handled of their make before you received this last mentioned?

Ans. It is, I think.

X Q. 1785. Which would it grade closer to, the four or five yard sheeting, in point of weight?

Ans. I think it grades near the 4-yard goods.

X Q. 1786. How long have you known and sold brown sheetings made by the Atlantic Mills branded L L?

Ans. That I could not say positive. A good many years.

X Q. 1787. How long have you known the Lawrence L L and sold it?

Ans. I should say fifteen years.

X Q. 1788. You have known the Atlantic for about the same length of time and handled it off and on, have you not?

Ans. I should say I had; yes, sir. I may be mistaken in that, however, but I think about the same length of time.

X Q. 1789. Throughout the time you have known them they have been, respectively, invoiced, advertised, distinguished

285 from each other, and known generally as Atlantic L L and Lawrence L L, have they not?

Ans. Yes, sir.

X Q. 1790. These other brands of L L goods which you have mentioned are generally known, invoiced, advertised, and distinguished from each other and from the Lawrence and Atlantic as Aurora L L, Beaver Dam L L, Badger State L L, etc., throughout the list mentioned by you, are they not?

Ans. Yes, sir.

X Q. 1791. And that has always been true of them, so far as your knowledge goes, has it not?

Ans. That was always true, so far as I know.

H. L. PINNEY.

The further taking of depositions adjourned to to-morrow, Wednesday, July 28, 1886, at ten o'clock a. m.

CHICAGO, ILLINOIS, *July 28th*, 1886.

Met pursuant to adjournment, at 10 o'clock a. m.

Present: Same parties as before.

C. H. JONES, a witness produced, being first duly sworn, deposes and says:

Q. 1792. Please state your name, age, residence, and occupation.

Ans. C. H. Jones; 28; residence, Chicago, Illinois; occupation, salesman in A. S. Gage Co.'s wholesale and retail dry goods, corner of Adams street and Wabash avenue; been with this house three months. Before that I was with Schlesinger & Mayer for nearly a year, also retail dry goods merchants on State street, Chicago. Prior to that, in the retail department of Marshall, Field & Co., Chicago.

Q. 1793. Are you familiar with and have you been selling coarse brown muslins stamped with the trade-mark L L?

286 Defendants except to the form of this question, which affirms that there is such a trade-mark as L L, that being the disputed question in controversy.

Ans. Yes, sir.

Q. 1794. Should one ask you for L L muslin what would you understand such a one to mean?

Ans. Defendants except to the foregoing question as calling merely for the individual opinion of the witness and not for the proof of any fact or of any usage or custom of the trade.

Ans. Lawrence L L.

Q. 1795. Do your customers ever inquire for such sheetings simply as L L muslin or sheeting?

Ans. Yes, sir.

Cross-examination by Mr. J. M. DICKINSON:

X Q. 1796. The goods known in the trade as the Lawrence L L sheeting is always stamped with the image of a bull, or bull's head, the words "Lawrence Mills," and the word "sheeting," is it not?

Ans. Well, I don't remember of seeing a bull's head on them.

X Q. 1797. Do you remember of ever seeing the image of a bull on it?

Ans. No, sir.

X Q. 1798. How long have you been selling Lawrence L L sheeting?

Ans. Nearly a year.

X Q. 1799. Have you sold much of it during that time?

Ans. Yes, sir.

X Q. 1800. And you positively have no recollection of ever having seen the image of a bull or a bull's head stamped upon any of it?

Ans. No, sir.

X Q. 1801. Who told you that the letters L L was a trade-mark?

Ans. No one.

X Q. 1802. Do you know whether or not it is a trade-mark?

287 Ans. Every brand of muslin I have handled has a trade-mark.

X Q. 1803. I repeat my question. Do you know whether or not the letters L L on the Lawrence sheeting is a trade-mark?

Ans. Yes, sir; I should think it was.

X Q. 1804. I repeat the question. Do you know whether or not they are a trade-mark on said goods?

Ans. Having always seen them on that muslin I am led to believe it is.

X Q. 1805. Is that your only reason for thinking so?

Ans. Yes, sir.

X Q. 1806. You have only been familiar with Lawrence L L sheeting for one year. Is that correct?

Ans. Yes, sir.

X Q. 1807. During that time you have also seen Badger State L L, Aurora L L, Atlantic L L, and other L L goods, have you not?

Ans. We did not handle all you mentioned.

X Q. 1808. What other L L sheetings of the same grade as the Lawrence were you familiar with throughout the said one year?

Ans. No other grade.

X Q. 1809. When were you with Marshall Field & Co.?

Ans. 1883.

X Q. 1810. Did you have any knowledge of brown sheetings during the time you were with that concern?

Ans. No, sir.

X Q. 1811. Did you not see other L L sheetings besides Lawrence L L sheeting in their stock during the time you were with them?

Ans. Yes, sir.

X Q. 1812. Name them.

Ans. Atlantic L L.

X Q. 1813. Is that all?

Ans. All that I recollect.

X Q. 1814. Did they not have at that time Beaver Dam L L and Badger State L L?

Ans. Not that I remember of; no, sir.

288 X Q. 1815. To the best of your recollection, did they have those goods or did they not have them during that year?

Ans. Did not have them.

X Q. 1816. When did your first knowledge of Lawrence L L begin? Please give the time, as near as you can.

Ans. August, 1885.

X Q. 1817. Up to that time had you never seen Beaver Dam L L, or Aurora L L, or Badger State L L?

Ans. No, sir.

X Q. 1818. How soon after that before you saw and became familiar with any of these brands or with other brands of 4-yard sheeting?

Ans. I am not acquainted with any other 4-yard sheeting.

X Q. 1819. Then I understand that your familiarity and knowledge of 4-yard sheeting branded L L is limited to that known as Lawrence L L. Is this correct or not?

Ans. I do not understand what you mean by 4-yard sheeting.

X Q. 1820. Have you any acquaintance with any brown sheeting branded L L except the Lawrence?

Ans. Yes, sir.

X Q. 1821. Please name them.

Ans. Atlantic L. L.

X Q. 1822. Is that all?

Ans. Yes, sir.

X Q. 1823. You saw and were familiar with Atlantic L L before you were with the Lawrence L L. How is that?

Ans. They were both in the department at the same time.

X Q. 1824. Did you see the Lawrence L L when you were with Marshall Field & Co.?

Ans. No, sir.

X Q. 1825. You did see the Atlantic L L when you were with them?

Ans. No, sir.

289 X Q. 1826. Do you know whether or not L L is impressed upon brown sheetings to denote the grade or quality of the goods?

Ans. No, sir.

X Q. 1827. You know nothing to the contrary?

Ans. No, sir.

X Q. 1828. Did the sheetings which you have known as Lawrence L L have branded upon them the words "Lawrence Mills?"

Ans. No, sir; Lawrence L L sheeting. I am not positive and can't answer that.

X Q. 1829. Now, are you positive that anything was printed on it besides the letters L L?

Ans. Yes, sir.

X Q. 1830. The word "sheeting?"

Ans. I only remember Lawrence L L; whether it was "sheeting" or "mill" I could not say.

X Q. 1831. So far as your knowledge goes, has not this goods been designated generally as Lawrence L L sheeting?

Ans. Yes, sir.

X Q. 1832. Then, if it is ever designated simply as L L, without the accompanying "Lawrence L L," such cases are exceptional, are they not?

Ans. Yes, sir.

X Q. 1833. Then, as a rule, as far as your knowledge goes, they are generally designated as Lawrence L L, but in exceptional cases they are sometimes called simply L L; is that correct?

Ans. I have never seen a sheeting branded simply L L.

X Q. 1834. I spoke not of the way they are branded, but the way they are spoken of by word of mouth. Now, with this explanation, is not the foregoing statement correct?

Ans. Yes, sir.

290 X Q. 1835. Your experience has been of short duration and quite limited, has it not?

Ans. Yes, sir.

X Q. 1836. Do you claim to be an expert in this line of business, and qualified to speak of the usages and customs of the trade, including buyers and consumers, in respect to this class of goods?

Ans. No, sir.

X Q. 1837. Then, as I understand you, you have simply undertaken to give your personal opinion and impression which have been derived from a familiarity of about one year with Lawrence L L sheeting, and has not extended to a sale of or familiarity with any other L L sheeting?

Ans. That is correct.

Redirect examination by Mr. W. G. RAINEY:

R. D. Q. 1838. In your answers to X Q. 1811 and 1812 you have stated in substance that you saw Atlantic L L at Marshall Field & Co., and in your answer to X Q. 1825 you have stated that you did not see Atlantic L L at Marshall Field & Co's. Will you please explain which of these answers is correct? I will now read these questions and answers to you.

Defendants except to complainant's counsel stating in juxtaposition the conflict in witness' testimony, and objects to his reading the said questions and answers to the witness.

(The questions and answers were read by complainant's counsel, notwithstanding said objection.)

Ans. Well, I understood that it was at Schlesinger & Mayer's that I saw Atlantic sheeting and not at Marshall Field & Co.'s.

Recross-examination by Mr. DICKINSON:

Re-X Q. 1839. What time were you with the firm of Schlesinger & Mayer?

Ans. 1885. From August, 1885, till May, 1886.

Re-X Q. 1840. Then you were acquainted with Atlantic L L before you were with Lawrence L L?

291 Objected to by complainant's counsel as not proper recross-examination, and because the witness has already answered the question.

Ans. No, sir.

Re-X Q. 1841. Then have you been familiar with the Lawrence L L sheeting for the same length of time?

Ans. Yes, sir.

Re-X Q. 1842. Did I say a word to you in my first cross-examination about the firm of Schlesinger & Mayer?

Ans. Not that I recollect.

Re-X Q. 1843. Were not all of my questions put to you slowly and distinctly, and were not your answers given with deliberation?

Ans. Yes, sir.

C. H. JONES.

DUNCAN CAMPBELL, a witness produced by the complainant, being first duly sworn, deposes and says:

Q. 1844. State your name, age, residence, and occupation.

Ans. Duncan Campbell; 40 years; residence, Chicago, Illinois; occupation, dry-goods clerk in the domestic department of Charles Gossage & Co., retail merchants, State street, Chicago. I have been with this house five years and a half; in the domestic department as salesman for eighteen months, and prior to that in the white goods department.

Q. 1845. State whether during the past eighteen months you have been familiar with and selling coarse brown muslins stamped with L L?

Ans. Yes.

Q. 1846. What do you understand L L to mean should a customer inquire of you for double L goods?

Ans. A coarse brown sheeting manufactured by the Lawrence Manufacturing Company.

292 Cross-examination by defendants' counsel:

X Q. 1847. How long have you sold brown sheetings stamped L L?

Ans. From fifteen to eighteen months, as near as I can come to it.

X Q. 1848. Then your familiarity and acquaintance with L L brown sheeting is limited to the fifteen or eighteen months next preceding the present time?

Ans. Yes.

X Q. 1849. Have you been familiar during that time with any other brand of coarse brown sheeting stamped L L, except the Lawrence?

Ans. Occasionally I sold a brand called the Shawmut. It was branded with L L.

X Q. 1850. This is made by the Lawrence Mills, is it not?

Ans. I could not say who it is made by.

X Q. 1851. Suppose a person had bought of you both the Shawmut and the Lawrence and subsequently should come in and ask you for L L sheeting, might he not mean the Shawmut?

Ans. I would show him the Lawrence.

X Q. 1852. Might he not mean Shawmut?

Ans. He might, but I would understand it as meaning the Lawrence; I would show him the Lawrence.

All after the words "he might" is excepted to as not responsive to the question and as being volunteered by the witness of his own accord.

X Q. 1853. Those two grades or brands are generally known and distinguished from each other as "Lawrence L L" and "Shawmut L L," are they not?

Ans. Well, we call the Shawmut just the "Shawmut," and the Lawrence "L L." When they ask for the Shawmut we show them

the Shawmut and when they ask for L L we show them the Lawrence.

293 X Q. 1854. Then you, according to your experience and knowledge, do not consider the Shawmut as falling within the simple designation of "L L sheeting?"

Ans. I call the Lawrence the "L L sheeting."

Question repeated to the witness.

Ans. It is marked L L—Shawmut L L; that is all I remember is on it.

X Q. 1855. Your answers are not responsive to my question, and I repeat it as follows and request an answer to it: Then you, according to your experience and knowledge, do not consider the Shawmut as falling within the simple designation of "L L sheeting?"

Ans. No; I do not.

X Q. 1856. What has the Lawrence L L stamped upon it?

Ans. It has the top part of it the representation of a bull's head, the "Lawrence Manufacturing Company" and "L L" at the bottom.

X Q. 1857. Is it "Lawrence Manufacturing Company" or "Lawrence Mills?"

Ans. Lawrence Manufacturing Company or Mills, I don't remember.

X Q. 1858. Has it or not the words "Lawrence Mills" stamped on it?

Ans. No; as far as I recollect. Lawrence Manufacturing Company, so far as my recollection goes.

X Q. 1859. You never saw any but what had the image of the bull or bull's head on it, did you?

Ans. Not that pretended to be the Lawrence Manufacturing Company.

X Q. 1860. Your acquaintance with L L sheeting has been limited to the Lawrence L L and Shawmut L L; is this correct?

Ans. Yes, sir.

294 X Q. 1861. Have you ever sold or handled Atlantic L L sheeting?

Ans. Not that I remember of.

X Q. 1862. Has not your house handled it within the last eighteen months?

Ans. I don't recollect of it.

X Q. 1863. Will you say that it has not?

Ans. No; I don't recollect it.

X Q. 1864. You are familiar in the trade with the names Atlantic L L, Beaver Dam L L, Aurora L L, Badger State L L, and some others, applying to brown sheetings, are you not?

Ans. I have heard of the names, but I have not handled them.

X Q. 1865. Your experience in the brown-sheeting business is very limited, both as respects time and as respects extent of number of brands, is it not?

Ans. I know all the principal brands.

X Q. 1866. But you have never seen any but the Lawrence and Shawmut, which are branded L L?

Ans. I might, but I don't recollect of any.

X Q. 1867. Do you know the weight of the Lawrence L L sheeting—that is, how many yards of the same it takes to make a pound?

Ans. No; I could not say positive.

X Q. 1868. How many do you think?

Ans. No idea.

X Q. 1869. Could you say as much as three?

Ans. Yes; possibly it would take four.

X Q. 1870. Will four yards of it weigh a pound?

Ans. I think so.

X Q. 1871. How about five yards?

Ans. I cannot say.

X Q. 1872. So far as you know, it may be three, four, five, or six, may it not?

295 Ans. Four pounds and perhaps more—four yards, I mean.

X Q. 1873. How many yards would it take to make a pound of Shawmut?

Ans. I look upon both brands as being about the same weight.

X Q. 1874. How many threads are there in the warp and how many in the filling in the Lawrence goods?

Ans. I think about sixty both ways.

X Q. 1875. How many in the Shawmut?

Ans. Shawmut would count a little less—probably two threads.

X Q. 1876. Then there is a difference in the texture in the Shawmut and Lawrence, in your opinion?

Ans. A slight one.

X Q. 1877. This difference consists in the weaving?

Ans. As far as I know. The one—the Shawmut—looks a trifle lighter than the other—not so closely woven.

X Q. 1878. Then they are necessarily woven at different times, different processes?

Ans. I could not answer that question.

X Q. 1879. I mean the same conditions for weaving the Lawrence cannot exist when a goods of a different count in the texture is made, and both cannot be woven at the same time on the same loom and in the same piece.

This and all similar questions objected to by counsel for complainant as not proper cross-examination, as not pertinent to any issue in these causes, and because the witness has not shown himself to be an expert weaver, and the witness is instructed not to answer.

WITNESS: I follow instructions.

Defendants' counsel here requested the notary to instruct
296 the witness to answer the question, and that the question of its competency would be passed upon by the court.

Notary stated that he did not think he had any such authority, and declined to do so.

Defendants here stated by counsel that the object in asking this and similar questions was to ascertain what general knowledge the

witness had as to the subject-matter as to which he has been testifying, and with this explanation they again request the notary to instruct the witness that it is his duty to answer.

The notary makes the same reply as above.

Defendants, by counsel, here protested against complainant's counsel assuming the right to instruct the witness not to answer, and they except to the same, and decline to proceed further with the cross-examination of this witness on account of the aforesaid action of said counsel, said witness, and said notary.

Complainant's counsel, having no further questions to ask the witness, requests the witness to sign the same.

DUNCAN CAMPBELL.

At the conclusion of the deposition of Duncan Campbell the further taking of testimony was adjourned to 1.30 o'clock p. m., this day.

Met pursuant to adjournment at 1.30 o'clock p. m.

Present: Same parties as before.

ALFRED TAYLOR, a witness produced by the complainant, being first duly sworn, deposes and says:

Q. 1880. State your name, age, residence, and occupation.

Ans. Alfred Taylor; age, 45; residence, Chicago, Illinois; occupation, dry-goods salesman; am selling goods for the retail house of Charles Gossage & Co.; been with them for two years and ten months, and for all this time have been salesman in the domestic department.

297 Q. 1881. State whether you have been familiar with and selling during this time brown muslin stamped with L L.

Ans. I have.

Q. 1882. At any time during these two years and a half should one inquire of you for L L sheeting or muslin what would you understand them to mean or want?

Ans. Well, I should understand them to mean Lawrence Mills.

Q. 1883. Do any of your customers inquire of you for L L sheeting?

A. Yes.

Cross-examination by defendants' counsel:

X Q. 1884. How long have you lived in Chicago?

Ans. I came to Chicago five years ago this month.

X Q. 1885. In what business were you engaged next preceding your employment by Charles Gossage & Co.?

Ans. I was two years in the firm of Carson, Pirie & Co., which was the same firm as Charles Gossage, on the North Side.

X Q. 1886. In what business were they engaged?

Ans. Dry goods.

X Q. 1887. What were your special duties, if any, while in the employ of the house Carson, Pirie & Co.?

Ans. In charge of the prints and gingham department.

X Q. 1888. In what capacity were you in charge of them—what were your duties in respect of them?

Ans. Well, my duty was to buy the goods and to sell behind the counter.

X Q. 1889. Do you mean to say that you were the buyer of that house for that class of goods?

Ans. Yes. I had to go to the wholesale house, on Madison street, and pick out the goods. It amounts to the same thing.

298 X Q. 1890. While with that firm did you have anything to do with brown sheetings?

Ans. Only in this way, that they were short-handed there, and if they wanted some one to wait on customers I went across. It was right opposite.

X Q. 1891. What brands of sheeting branded L L and being brown cotton were handled by that firm while you were with them?

Ans. To the best of my recollection, I cannot say whether they handled any L L's at all.

X Q. 1892. When did your knowledge of and experience with brown sheetings begin?

Ans. During this last twelve months.

X Q. 1893. Then what you know of L L brown sheeting and the meaning of L L is based upon the experience you have acquired by selling and handling such goods within the last twelve months?

Ans. Well, I have known there were such goods before that, but I did not handle them until the last twelve months.

X Q. 1894. When did your knowledge of brown sheeting stamped L L begin?

Ans. My knowledge? Within the last two years and ten months—the time I have been in the department.

X Q. 1895. Did you sell any prior to twelve months ago?

Ans. Yes; probably.

X Q. 1896. With what L L sheeting have you had experience with the trade?

Ans. Shawmut.

X Q. 1897. Not the Lawrence?

Ans. Lawrence, of course. I said so before.

X Q. 1898. Then the Shawmut L L and Lawrence L L are
299 the only brown sheetings branded L L with which you have had any experience?

Ans. To the best of my knowledge.

X Q. 1899. Your answers in your foregoing deposition are based upon your personal knowledge and personal experience, are they not, in handling those goods?

Ans. Decidedly so.

X Q. 1900. How are these goods respectively branded? Give all the marks and words you can.

Ans. Well, Lawrence Mills L L and the Shawmut L L; I don't know anything else.

X Q 1901. State whether or not there is an image or picture of any animal impressed upon either one of them.

Ans. Yes; I believe there is; I could not just call to mind; I did not give much notice.

X Q. 1902. Can't you state what it is, and on which goods it is impressed?

Ans. No; I cannot.

X Q. 1903. Have not these respective goods been known generally and designated, so far as you know, as Lawrence L L and Shawmut L L?

Ans. Yes.

X Q. 1904. Whenever a call is made simply as "L L," leaving out any other word, such as Lawrence or Shawmut, such a case is exceptional and rare, is it not?

Ans. Well, I have known customers ask for the Lawrence Mills, and sometimes ask for it without the "Lawrence."

X Q. 1905. But the general way of designating them has been Lawrence L L, has it not?

Ans. Yes.

X Q. 1906. Who makes the Shawmut L L?

Ans. I could not tell.

X Q. 1907. Who makes the Lawrence L L?

Ans. I suppose it is made by the Lawrence Mills.

300 X Q. 1908. What makes you think that?

Ans. Well, I believe that the Lawrence Mills make those goods.

X Q. 1909. Is there anything stamped on it that leads you to think so?

Ans. No.

X Q. 1910. Is not the name of that mill stamped on it?

Ans. The name Lawrence is, of course, branded on it.

X Q. 1911. Is not that, then, the reason why you think they are made by the Lawrence Mills?

Ans. Decidedly.

ALFRED TAYLOR.

And thereupon (it being 2.30 p. m.) witness Duncan Campbell was recalled by complainant, and complainant's counsel withdrew his objection to X Q. 1836, as above noted, and tendered the said witness to counsel for defendants for further cross-examination without such objection.

The defendant's counsel stated that they declined, in view of what had transpired and noted on the record, to proceed further with the examination of this witness, and they excepted to complainant's right to recall the witness after he had been discharged, without their consent or an order of the court or clerk.

The witnesses, Duncan Campbell and Alfred Taylor, demanded their fees of $1.50 each, which were paid to them, to wit, three dollars.

The further taking of depositions was at this point adjourned to to-morrow, Thursday, July 29, at ten o'clock a. m.

CHICAGO, ILLINOIS, *July 29th*, 1886.

Met pursuant to adjournment.

Present: The same parties as before.

F. W. ROEPSTORFF, a witness produced by the complainant, being first duly sworn, deposes and says:

301 Q. 1912. State your name, age, residence, and occupation.

Ans. F. W. Roepstorff; age, 28; residence, Chicago, Illinois; occupation, dry-goods clerk for my brother, A. Roepstorff; we are in the retail business at 581 Blue Island avenue, Chicago, Illinois; have been in the business about twelve years.

Q. 1913. State whether you have handled during these twelve years coarse brown sheeting stamped with the letters L L.

Ans. I have.

Q. 1914. What are your special duties in your brother's store besides selling sheetings, if any?

Ans. I do all the buying.

Q. 1915. Should one speak to you at any time during these twelve years about L L sheeting what would you understand him to mean?

Defendants except to the foregoing question as calling simply for the understanding of witness and not for the proof of any facts as such.

Ans. The first thing I would think of would be Lawrence L L.

Q. 1916. Is that the significance of the term L L to you and to the trade with which you are familiar?

Ans. It is.

Q. 1917. Please state how these muslins are spoken of between you and the jobbers with whom you deal.

The foregoing question excepted to by defendants as calling for the individual practice of the witness, which is irrelevant and incompetent.

Ans. When I ask them for L L they ask me if I want the Lawrence.

Q. 1918. When wishing to buy such sheeting how are they spoken of between you and your jobber, and how are they spoken of?

302 Last exception of defendants repeated.

Ans. As simply double L's.

Cross-examination by defendants' counsel:

X Q. 1919. How long since you first became familiar with Lawrence L L sheeting?

Ans. I think I have known that brand ever since I have handled muslins; ten or twelve years.

X Q. 1920. During that time have you handled and sold any other brown sheeting stamped L L besides the Lawrence?

Ans. I have.

X Q. 1921. Please name the brands.

Ans. Atlantic L L; that is about the only thing I can remember.

X Q. 1922. When did you first get acquainted in your business with Atlantic L L?

Ans. I have known that about ten or twelve years, too.

X Q. 1923. What has the Lawrence sheeting branded on it besides the letters L L?

Ans. Sheeting.

X Q. 1924. Is that all?

Ans. I could not tell whether it says Lawrence Mills on it or not. I have not looked at the brand for some time.

X Q. 1925. Has it any image or picture on it of any animal?

Ans. Yes; I think there is. If I could see the brand I could tell, but I could not describe it. I think it is an animal of some kind.

X Q. 1926. Let me refresh your memory and ask you if all the Lawrence sheetings branded L L with which you have been familiar was not also branded with the picture of a bull or bull's head and the words "Lawrence Mills?"

303 Ans. I remember the head, but I could not say exactly as to the words.

X Q. 1927. Please examine the exhibit here shown you, No. 1, already filed in this case, and state whether or not that is the brand of Lawrence L L goods in all respects with which you have been familiar.

Ans. It don't look to me like it.

X Q. 1928. You do not, then, recognize that as Lawrence L L sheeting?

Ans. Not as long as I don't see any more brands.

X Q. 1929. Don't you see the picture of a bull at the top, then the words "Lawrence Mills sheetings," then the capital letters "L L?"

Ans. I see them; yes.

X Q. 1930. And you saw that when you answered Q. 1885?

Ans. I did.

Redirect examination by Mr. W. G. RAINEY:

R. D. Q. 1931. Do you recognize Exhibit No. 2 in these cases as a similar stamp of the Lawrence goods you have been selling?

Ans. I have not looked at the brand for some time and I could not give an exact answer. I recognize Lawrence Mills sheetings and L L.

F. W. ROEPSTORFF.

ADOLPH LURIE, a witness produced by complainant, being first duly sworn, deposes and says:

Q. 1932. Please give your name, age, residence, and occupation.

Ans. Adolph Lurie; age, thirty-eight; residence, Chicago, Illinois; occupation, retail dry-goods merchant; in business for myself at 569 Blue Island avenue, Chicago; been in business for the past fifteen months on Blue Island avenue, and previous to that

304 for fourteen years in the same neighborhood of my present store; two or three years of this time on Centre avenue, and

several years at 364 West Eighteenth street, where I have a store now.

Q. 1933. State whether you have been handling and selling brown muslins stamped with L L; if so, for how long?

Ans. I can't recollect whether it is three or four years.

Q. 1934. During this time should any one speak to you about L L sheeting or muslin what would you understand them to refer to?

Ans. I understand them to refer to Lawrence L L.

Q. 1935. How are these goods mentioned between you and the jobbers from whom you purchase the same? When you want such goods how do you ask for them?

Defendants except to this and the foregoing question as calling for the individual practice of the witness and as being irrelevant.

Ans. If I want such goods they shall give me the muslins L L.

Cross-examination by defendants' counsel:

X Q. 1936. You have only been familiar with the Lawrence L L muslin within the last three or four years?

Ans. Yes, sir.

X Q. 1937. Within that time have you been familiar with any other brown muslin stamped with L L?

Ans. I recollected that, maybe two or three months ago, I had another brand of L L, but it was not the Lawrence.

X Q. 1938. What brand of L L was it?

Ans. I don't know.

X Q. 1939. The Lawrence, then, is the only L L that you have handled whose name you can mention?

Ans. Yes, sir.

305 X Q. 1940. How was the Lawrence sheetings which you have handled branded?

Ans. It was blue.

X Q. 1941. What words or pictures did it have on it?

Ans. Just the same like other Lawrence.

X Q. 1942. Well, how are these other Lawrence L L sheetings branded; with what words and pictures, if any?

Ans. I don't know about the pictures or words, what kind of signs or what kind of letters they have, only if I know the brand Lawrence L L.

X Q. 1943. You don't know, then, what is printed on it except the letters L L; is that correct?

Ans. No, sir; it is not correct.

X Q. 1944. Then how do you know the Lawrence sheeting when you see it?

Ans. I can read Lawrence L L. I can read the words on it.

X Q. 1945. It has the words "Lawrence Mills sheeting" printed on it, has it not?

Ans. Well, maybe.

X Q. 1946. Well, I will ask you if that is not true; don't you know that?

Ans. No, sir; I do not.

X Q. 1947. I here hold up to you Exhibit No. 1, filed in this case. Now, please describe what you see on it, beginning at the top.

Ans. It is a cow; "Lawrence Mills sheetings L L."

X Q. 1948. Do you recognize that as the Lawrence Mills sheeting which you have handled; I mean do you recognize the brand as the same?

The witness here called for the sample and felt the texture.

306 The foregoing is put down at request of defendants' counsel.

Ans. Well, I think there is another picture on it.

X Q. 1949. Would you recognize this as identical—that is, the same as the Lawrence sheetings which you have handled? Please answer that question.

Ans. It seems to me it ain't so heavy.

X Q. 1950. Would you recognize this—that is, Exhibit No. 1, here held up to your view, as the same as the Lawrence L L sheeting which you have handled?

WITNESS: What — you mean by recognize?

X Q. 1951. I mean that if you looked at the whole brand, from top to bottom, does it look to you to be the goods, the same as the Lawrence L L which you have handled?

Ans. If I ask for Lawrence L L or just L L muslin then I want that they shall give me Lawrence L L.

X Q. 1951 here repeated to the witness. Now, I want a straightforward answer to my question, without any evasion.

The remark of the solicitor for the defendants is objected to as uncalled for, as there is nothing to indicate that the witness is trying to evade his question.

Ans. I look to know how the muslin is folded; what kind of fold it is.

X Q. 1952. Can't you tell the genuine Lawrence L L unless you see it in the fold?

Ans. No, sir; I can't tell.

X Q. 1953. Then you go by the fold and not merely the letters L L?

Ans. I haven't got no time, if I want some goods, to look at all the brands. I say only they shall give me the double L muslin.

307 X Q. 1954. Then you cannot tell, looking at Exhibit No. 1 here shown you, whether that is genuine Lawrence L L or not?

Ans. You mean by genuine muslin first muslin or the muslin that I buy?

X Q. 1955. I mean, looking at said exhibit here shown you, does it convey to your mind that it is L L goods made by the Lawrence Mills or not?

Ans. I don't know if it is made by the Lawrence Mills or not?

X Q. 1956. Do you know whether it is the same L L goods—that is, of the same make—that you have handled?

Ans. I don't know. Maybe I had some like that.

X Q. 1957. Can you or not say whether or not, looking at the whole brand, you recognize it as indicating it to be the same make of Lawrence L L sheeting which you say you have handled?

Ans. This kind of brand I didn't handle.

X Q. 1958. Then you do not recognize this as of the same kind which you handled?

Ans. I don't.

X Q. 1959. Now, please look at Exhibit No. 2 filed in this cause, here held up to your view, and state whether or not you recognize this brand as indicating that the goods on which it is stamped is of the same kind as the Lawrence L L which you say you have handled.

Ans. This is the goods what I handled and what I know.

X Q. 1960. You recognize this as the real Lawrence L L goods, with which you have been familiar?

Ans. Well, I am more used to this one and some other muslins. Maybe it is other muslins, same brand, better.

X Q. 1961. But you recognize the brand from top to bottom as the same?

Ans. Yes, sir.

308 X Q. 1962. You recognize this from the bull's head, do you not?

Ans. Yes, sir.

X Q. 1963. Is that or not the trade-mark branded on all the Lawrence L L sheetings which you have handled?

Ans. I had some other Lawrence of this other kind—muslins. They didn't have such a brand.

X Q. 1964. What did they have?

Ans. Some like you showed me before.

X Q. 1965. Did you not say that you did not recognize Exhibit No. 1, which was first shown you, as being the brand which was upon the Lawrence goods which you say you handled?

Ans. Yes, sir; I said so.

X Q. 1966. And you say so now, don't you?

Ans. I said so before.

X Q. 1967. And you say so now?

Ans. Yes, sir.

X Q. 1968. I now show you Exhibit No. 2 folded partially. What do you see upon it?

Ans. "Lawrence Mills sheetings L L."

X Q. 1969. Would you recognize that alone as indicating to you that the goods on which it is branded is Lawrence L L sheeting?

Ans. Yes, sir.

X Q. 1970. I now show you Exhibit 2. What do you see upon it?

Ans. "Sheetings L L."

X Q. 1971. Would you recognize that alone as indicating to you that the goods on which it was branded was Lawrence L L sheeting?

Ans. Yes, sir.

X Q. 1972. Why? Because it has L L on it?

Ans. Double L.

X Q. 1973. What do you see on the brown muslin here shown you?

Ans. Double L or L L.

309 X Q. 1974. Look at that and say whether you would recognize it as indicating that this goods was made by the Lawrence Mills.

Ans. Yes, sir.

X Q. 1975. That is your interpretation of it?

Ans. Yes, sir.

X Q. 1976. What distance are you from it?

Ans. If I see double L, I think it is the brand that I always buy.

X Q. 1977. What distance are you from this piece of muslin? How far are you off from it?

Ans. About four feet.

X Q. 1978. I now hold in my left hand another piece of muslin. What do you see on that?

Ans. I see two L's on it.

X Q. 1979. Is there any difference in the size of the L's?

Ans. It is.

X Q. 1980. Tney are both the same distance from you, are they not?

Ans. Yes, sir.

X Q. 1981. Could you tell whether either one of them or both of them is of the Lawrence make from where you are sitting?

Ans. Yes, sir; I can.

X Q. 1982. How can you tell?

Ans. By the letters.

X Q. 1983. You cannot tell by the texture of the goods, can you?

Ans. I think I can.

X Q. 1984. How many yards to the pound is the goods which I hold in my right hand and how many yards to the pound is the goods which I hold in my left hand?

Ans. I never weighed yard muslin and I always depend on the wholesale man that sold me the goods.

X Q. 1985. To what grade of sheeting does this which I hold in my left hand belong?

Ans. To fine muslin.

310 X Q. 1986. And what grade does that which I hold in my right hand belong to?

Ans. To the coarse.

X Q. 1987. In your opinion, that in the right hand, then, is a heavier goods somewhat than that in the left?

Ans. Yes, sir.

X Q. 1988. The Lawrence is what is called a coarse brown sheeting, is it not?

Ans. Yes, sir.

X Q. 1989. Now, which is the Lawrence, that which I hold in my right or that which I hold in my left hand?

Ans. That which you hold in your right.

X Q. 1990. Now, I will unfold that which I have held in my right and ask you to read what there is printed on it.

Ans. "Atlantic Mills L L, fine sheetings."

X Q. 1991. Now, I will unfold that which I hold in my left hand and ask you to state what appears upon it.

Ans. "Lawrence Mills sheeting L L," with the picture of a bull at the top.

X Q 1992. Now, looking at these two goods and at the L L alone, a person could not well tell the difference, could they?

Ans. No; they could not; I couldn't myself.

X Q. 1993. That was an honest mistake on your part, giving your judgment to the best of your ability, was it not?

Ans. Yes, sir.

X Q. 1994. An ordinary buyer, seeing those two goods folded, showing nothing but the L L, might easily, by merely looking at them and not feeling the difference in texture, take one for the other, might they not?

Ans. Yes, sir.

The said goods, so exhibited to witness, is herewith filed as exhibits and part of his testimony, the Atlantic sheeting being marked "Lurie Exhibit No. 1" and the Lawrence "Lurie Exhibit No. 2."

P. H. T. MASON,
Notary Public.

A. LURIE.

311 The further testimony was here adjourned to 2 o'clock p. m. this day.

Met pursuant to adjournment, at 2 o'clock p. m.

Present: Same parties as before.

Complainant now offers in evidence a certified copy of a final decree in the case of The Lawrence Manufacturing Company *vs.* The Janesville Cotton Manufacturing Company, United States circuit court, western district of Wisconsin, and ask that the same be marked "Exhibit Badger State Decree," which is done.

Defendants except to the introduction of said paper as a part of or in connection with the foregoing depositions and do not waive the filing of the same, and reserve all exceptions both as to substance and as to the manner of introducing it.

Counsel for complainant requests the examiner to return said exhibit with the depositions now being taken, and so to file said exhibit, and counsel for complainant further requests counsel for defendants as to this and all other exceptions or objections noted to state the grounds thereof when noted.

The above notice and request is made to apply to all evidence, documentary and other, except such evidence as has heretofore been taken under and with reference to the stipulation, dated Boston, May 18th, 1886 (see page 2 of the printed record).

Defendants, by counsel, agree to the construction that the stipulation preceding the deposition of John Kilburn, on page 2, as to the privilege of exceptions shall only apply to such depositions as are expressly taken under it and so stated in the caption. As to noting the grounds of exception to the paper offered as Exhibit Badger State Decree, defendants say that such will be done when the same is introduced in a way that will make it properly a part of the record in this cause.

312 The said "Exhibit Badger State Decree," is as follows:

Decree.

United States Circuit Court, Western District of Wisconsin. In Equity.

LAWRENCE MANUFACTURING COMPANY

vs.

JANESVILLE COTTON MANUFACTURING COMPANY.

This cause coming on to be heard, Messrs. Raymond & Rainey appearing for the complainant and Mr. George G. Sutherland appearing for the defendant and confessing the said bill of complaint and consenting to this final finding and decree, the court doth order, adjudge, and decree as follows, the same being in accordance with the stipulation of the parties heretofore herein filed, to wit:

First. That the taxable cost heretofore and now incurred herein shall be paid by the complainant.

Second. That a perpetual injunction issue out of and under the seal of this court against the said defendant, The Janesville Cotton Manufacturing Company, demanding it, and each and every one of its officers, agents, servants, and employees, that from and after the first day of July, A. D. 1886, they and each of them shall desist and refrain from, directly or indirectly, using the said "L L" upon any sheetings of their manufacture, as in said bill of complaint is mentioned.

By the court:

R. BUNN, *Judge.*

Dated May 11, 1886.

313 We hereby consent to the above form of decree, the same being in accordance with the terms of a stipulation of the parties hereto heretofore filed herein.

RAYMOND & RAINEY,
For Complainant.
GEO. G. SUTHERLAND,
For Defendant.

UNITED STATES OF AMERICA,
Western District of Wisconsin, } *ss:*

I, F. M. Stewart, clerk of the circuit court of the United States of America for the western district of Wisconsin, do hereby certify

that I have compared the writings annexed to this certificate with the originals now in my custody and they are true copies of their respective originals and are correct transcripts therefrom and of the whole thereof now on file and remaining of record in my office. (Copy final decree in Lawrence Manufacturing Company *vs.* Janesville Cotton Manufacturing Company.)

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Madison, in the said western district of Wisconsin, this 28th day of July, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the said United States the one hundred and eleventh.

[SEAL.] F. M. STEWART, *Clerk.*

(Endorsed:) Filed May 11, 1886. F. M. Stewart, clerk.

314 PATRICK BERKERY, a witness produced by the complainant, being first duly sworn, deposes and says:

Q. 1995. State your name, age, residence, and occupation.

Ans. Patrick Berkery; age, 34, I think; residence, Chicago, Illinois; occupation, dry-goods salesman for C. W. & E. Pardridge, retail dry-goods merchants, 284 and 286 West Madison street, Chicago; been with them nearly two years; previous to that with P. F. Ryan & Co., on West Madison street, for about fourteen months.

Q. 1996. State whether during the times of your employment with Ryan & Pardridge you have been familiar with and selling coarse brown muslins stamped with L L?

Ans. Yes.

Q. 1997. During these times should one inquire of you for double L sheeting what would you understand him to mean?

Defendants except to this question because it simply calls for witness' individual understanding and is therefore incompetent and irrelevant.

Ans. Lawrence L L would be the first thing to strike me.

Cross-examination by Mr. J. M. DICKINSON:

X Q. 1998. What double L would you next think of after the Lawrence?

Ans. I don't know what I would think of next.

X Q. 1999. How many brown sheetings marked L L have you handled?

Ans. Atlantic, Beaver Dam, Badger State; that is about all, I think.

X Q. 2000. How long have you handled Atlantic L L?

Ans. January, this year, I believe, was the first.

X Q. 2001. How long have you handled the Beaver Dam L L?

315 Ans. We had some Beaver Dam's in Ryan's, but I am not certain whether it was L L or not.

X Q. 2002. How long have you handled Badger State L L?

Ans. To the best of my memory it was in January last.

X Q. 2003. Since you have known these several brands—that is, the Atlantic L L, the Beaver Dam L L, the Badger State L L, and the Lawrence L L—they have been severally known and designated by those names respectively, have they not?

Ans. Yes.

X Q. 2004. Your experience as a salesman, however, has been mostly confined to the Lawrence L L?

Ans. Yes.

X Q. 2005. How long have you known Lawrence L L sheeting?

Ans. About two years.

X Q. 2006. Did you ever handle any brown sheeting branded "Shawmut L L?"

Ans. Yes.

X Q. 2007. How long have you known that brand?

Ans. About twenty-three months.

X Q. 2008. You have known that and the Lawrence for about the same length of time?

Ans. Yes.

X Q. 2009. Who makes the "Shawmut L L?"

Ans. I don't know.

X Q. 2010. Who makes the Lawrence L L—that is, what mill?

Ans. I understand it is the Lawrence Manufacturing Co.

X Q. 2011. On what do you base that understanding; did anybody ever tell you so?

Ans. Because it is branded Lawrence.

The witness, Patrick Berkery, demanded his fees as witness in advance of testifying, which was paid to him, to wit, the sum of $1.50.

316 The further taking of depositions was at this point adjourned to to-morrow, Friday, July 30th, 1886, at ten o'clock a. m.

Met pursuant to adjournment this 30th day of July, 1886, at ten o'clock a. m.

Present: Same parties as before.

CHARLES A. TEAGUE, a witness produced by complainant, being first duly sworn, deposes and says:

Q. 2012. State your name, age, residence, and occupation.

Ans. Charles A. Teague; age, 42; residence, Chicago, Illinois; occupation, am clerking in the domestic department in the retail dry-goods house of Carson, Pirie & Co., Madison and Peoria streets, Chicago; have charge of three departments—linens, flannels, and domestics.

Q. 2013. State whether or not you buy for this house the goods for these three departments.

Ans. Yes.

Q. 2014. For how long have you been in the employ of this firm?

Ans. I am in my eighth year now.

Q. 2015. What other duties have you besides purchasing goods for this house?

Ans. I sell goods; have charge of the help in the three departments.

Q. 2016. Please state whether during these seven years that you have been with this house you have been purchasing and selling coarse brown sheeting stamped with the letters L L?

Ans. Yes.

Q. 2017. During this time should one speak to you about double L sheetings what would you understand him to mean or refer to?

Excepted to by counsel for defendants as calling for the individual opinion of the witness.

317 Ans. What am I to understand by that question; do you mean if they ask me for double L sheeting what am I to understand by it?

After the witness asked the above question the former question, No. 2017, was repeated to the witness, and thereupon the witness answered said question as follows:

The WITNESS: I think I understand the question now. What I want you to understand is, that if I was in a jobbing house a man offered me double L sheeting at a price I should expect him to be offering me Lawrence double L. Now, on the other hand, if a customer were to come to my retail counter—that is, an ordinary retail customer—and ask me for double L sheeting I should show him Lawrence double L if I had it, or if I didn't have that I would substitute either Badger State or Beaver Dam, the only other two brands of double L I have ever handled. I never handle the other two when I can procure the Lawrence.

The answer of the witness is objected to by defendants for the reason that it is not responsive and gives the notions of the witness as to matters not inquired about and volunteered by him.

Q. 2018. In the trade with which you are familiar what is the meaning of the term double L when applied to muslins or sheetings, as you understand it?

Ans. Lawrence double L.

Q. 2019. In your business intercourse with jobbing houses from which you purchase such goods please state whether or not this is the general significance of double L, so far as your knowledge goes.

Ans. Yes.

Q. 2020. How long have you been handling the Beaver Dam and Badger State L L?

Ans. I have handled the Badger State for seven years; the Beaver Dam I have handled but very little. I can't tell exactly how long.

Q. 2021. Can you give an idea as to the size of the retail
318 house of Carson, Pirie & Co. when compared to other retail dry-goods houses in Chicago?

Objected to by counsel for defendants as not calling for a fact.

Ans. I should say that our house rates about fifth or sixth—our West Side house.

Q. 2022. Can you mention, and, if so, please do so, the different retail houses in Chicago according to their size that do a larger business than your West Side house?

Ans. I should say Marshal Field, Charles Gossage, Mandel Brothers, Pardridge's, Schlesinger & Mayer.

Cross-examination by defendants' counsel:

X Q. 2023. How long have you handled the Lawrence L L?

Ans. Some six or seven years.

X Q. 2024. Do you know where that is made?

Ans. In Massachusetts, I believe.

X Q. 2025. Do you know what mills make it?

Ans. The Lawrence Manufacturing Company.

X Q. 2026. What is there stamped on the goods that makes you know that?

Ans. There is a heading of a bull's head, "Lawrence L L." Lawrence Mills sheeting is the stamp I recognize it by.

(The witness referred to Exhibit No. 2 in this case.)

X Q. 2027. Did you ever handle the Shawmut L L?

Ans. No, sir.

X Q. 2028. Is not the L L goods made by the Lawrence Manufacturing Company designated in the trade as Lawrence L L?

Ans. Not generally.

X Q. 2029. Is not the Beaver Dam L L's generally designated in the trade as Beaver Dam L L?

319 Ans. Yes, sir; in quotations, to me it is.

X Q. 2030. Then to you does not the word "Lawrence" on the Lawrence Mills L L designate that mill's L L from the double L made by other mills?

Ans. Why, certainly it does.

X Q. 2031. Then, I understand you to mean that the Lawrence L L's are distinguished from others and known in the trade as Lawrence double L's.

(Objected to by complainant's counsel as assuming a statement to have been made by the witness which he has not made.)

Ans. I understand them as Lawrence double L, and know them as Lawrence double L's, but I don't know anything about what the trade understands.

X Q. 2032. State if you ever handled the Atlantic L L.

Ans. Never.

X Q. 2033. You say that you have handled the Badger State L L's and the Lawrence L L's for about the same time. Now, if a customer were to call on you for L L's would it not be as reasonable to suppose that he desired Badger State L L's as he would Lawrence?

Ans. I don't think so.

X Q. 2034. Why?

Ans. Because if I want Badger State L L I ask for it, and I would naturally expect any other man would ask for it if he wanted it.

X Q. 2035. Is that your only reason?

Ans. That is my only reason.

X Q. 2036. Please state if you have ever handled any other sheeting made by the Lawrence Mills except the grade branded L L.

Ans. Yes, sir.

X Q. 2037. Please name them.

Ans. Their double X.

X Q. 2038. Was the brand on their double X the same as the Lawrence, with the exception of the letters L L and X X, respectively?

320 This and the above question objected to as not proper cross-examination.

Ans. I believe the letters on the double X were smaller than the letters double L. I mean these letters (the witness referring to the words "Lawrence Mills sheetings" on Exhibit No. 2). It has been two years since I have handled double X's.

X Q. 2039. Were the Lawrence X X and L L of the same or different grade?

Complainant's counsel made the same objection as noted to the last question.

Ans. Different grade.

X Q. 2040. Then, if the words "Lawrence Mills sheetings" are stamped on each grade, how do you distinguish the one grade from the other; do you not do it by the letters L L on one grade and X X on the other?

Same objection is made to this question by complainant's counsel, and complainant's counsel protests against the abuse of privilege taken by counsel for defendants in questioning this witness on a matter which is not proper cross-examination, and notice is here given that at the proper time or at the hearing a motion will be made to strike the same from the record if complainant desires so to do, as to which complainant reserves the privilege.

Ans. No.

X Q. 2041. Then please state how you do.

Same objection by complainant's counsel.

Ans. By both quality and brand.

X Q. 2042. Suppose you want to know the quality from the brand that is on it without seeing the goods, the brand being the same with the exception of the letters, how do you distinguish the one grade from the other?

Same objection by counsel for complainant.

321 Ans. In ordering I should order Lawrence X X and Lawrence L L. If I were ordering both grades I should order so many pieces of each.

X Q. 2043. What weight goods is the Lawrence L L?

Ans. I can't answer that question.

X Q. 2044. You know the weight of the two X?

Ans. No.

X Q. 2045. I want Q. 2042 repeated and I want a direct answer to it. (Q. 2042 repeated to witness.)

Same objection by complainant as before.

Ans. By ordering so many pieces of each grade, giving the brand.

X Q. 2046. Then would you in your order indicate the particular grade you wanted by the letters X X or L L?

Same objection by complainant's counsel.

Ans. Yes.

C. A. TEAGUE.

R. W. YOUNG, a witness produced by complainant, being first duly sworn, deposes and says:

Q. 2047. State your name, age, residence, and occupation.

Ans. R. W. Young; age, 34; residence, Chicago, Illinois; occupation, dry-goods business; been in that business since I was 14 years old; am with James A. Fleming, 225 Blue Island avenue, Chicago, and have been with him for 18 months; before that was with Schlesinger & Mayer for one year, and before I came to Chicago was at Brownsville, Tennessee, in the dry-goods business for four years.

Q. 2048. During your residence at Brownsville, Tennessee, and since you have been in Chicago, state whether you have been selling sheetings stamped with the letters L L.

322 Ans. In regard to Brownsville, Tennessee, cannot state positively, but can in regard to Chicago. I have handled them.

Q. 2049. Since you have been handling double L sheetings, in what capacity have you handled them, buying or selling?

Ans. In both buying and selling.

Q. 2050. Do you know the trade significance or meaning of the letters L L when stamped on sheetings or muslins or when double L is mentioned in reference to muslins? If so, please state what you understand such to be.

Objected to by counsel for defendants because it calls for the individual opinion of the witness, and the witness has not said that L L alone had been used on any sheetings.

Ans. Yes; as to my purchases it means Lawrence double L.

Q. 2051. In making such purchases or orders for the same how do you generally make them for double L muslins?

Objected to by counsel for defendants as calling for the individual opinion of the witness.

Ans. In buying I buy other brands, and frequently tell them to put me in some pieces of double L; sometimes ten pieces and sometimes twenty.

Q. 2052. What do you get when making such orders?

Objected to by counsel for defendants.

Ans. Lawrence double L.

Q. 2053. State from whom you purchase such sheetings.

Ans. Mr. Durdick, of John V. Farwell & Co., or their city salesman, Mr. Wood.

Q. 2054. Who are John V. Farwell & Co.?

Ans. One of the largest jobbers in the country.

Cross-examination by counsel for defendants:

X Q. 2055. Did you ever buy or handle any other double L's than the Lawrence L L?

Ans. No, sir.

323 X Q. 2056. How long have you handled Lawrence L L?

Ans. For the past two years, to my knowledge.

X Q. 2057. Can you state how they are branded?

Ans. "Lawrence L L." We never pay any more attention to it than that. Lawrence L L is what we go by.

X Q. 2058. Did you ever hear of the Atlantic L L?

Ans. Yes.

X Q. 2059. Did you ever see it?

Ans. I presume I have.

X Q. 2060. How is that known in the trade, as Atlantic L L?

Ans. That I could not say, as I never handled it.

X Q. 2061. What you have said heretofore has reference to Lawrence L L. Is because you are only familiar with the Lawrence and have handled no other?

Ans. No; not exactly that; simply because I don't remember the other brands.

X Q. 2062. You have handled Lawrence almost exclusively, have you not?

Ans. For the past eighteen months.

X Q. 2063. Did you ever buy brown cottons for the other houses you were with previous to your employment with Fleming?

Ans. No, sir.

X Q. 2064. Do you now handle any brown sheeting upon which are the letters A, B, or C?

Ans. Yes; Continental C.

Question and answer objected to as not proper cross-examination, and the same protest and notice is entered as to similar X Q. propounded to the witness Teague.

X Q. 2065. Did you handle any L L's while you were with Schlesinger & Mayer?

Ans. No, sir.

X Q. 2066. On what grade of goods are the letters L L used?

324 Ans. Good brown cotton; the count I cannot say. I don't remember the count or weight.

X Q. 2067. Then you understand the letters L L to mean a good brown cotton?

Ans. No, sir; I understand them to mean Lawrence L L.

R. W. YOUNG.

The further taking of testimony was here adjourned to 2 o'clock p. m. this day.

CHICAGO, *July 30th*, 1886.

Met, pursuant to adjournment, at 2 o'clock p. m.

Present: Same parties as before.

J. W. SPENGLER, a witness produced by complainant, being first duly sworn, deposes and says:

Q. 2068. State your name, age, residence, and occupation.

Ans. J. W. Spengler; age, 26 next October; residence, Chicago, Illinois; occupation, retail dry-goods business of the firm of W. Spengler & Sons, 371 and 1214 Milwaukee avenue, Chicago.

Q. 2069. How long have you been actively engaged in the dry-goods business?

Ans. I have been in it from twelve years up.

Q. 2070. What has been your special duties during the past three years?

Ans. A year and a half of the three years I have been doing the buying and the balance of the three I have been West; have not been in town.

Q. 2071. Have you been buying for your two houses for the past year and a half domestic sheetings or demestics?

Ans. Yes.

325 Q. 2072. Among other muslins state whether you have been purchasing coarse brown muslins stamped with the letters L L?

Ans. No, sir.

Q. 2073. Have you bought any muslins stamped with L L?

Ans. Yes, sir.

Q. 2074. From whom have you purchased such muslins?

Ans. Marshall Field & Co.

Q. 2075. To you and to the trade with which you are familiar, so far as your knowledge goes, what significance or meaning is attached to the letters L L?

Objected to by defendants as asking for the opinion of the witness and not for any fact.

Ans. Lawrence.

Cross-examination by counsel for defendants:

X Q. 2076. You say, if I understand you correctly, that in your purchases of muslins or brown sheetings for your two houses you never purchased any L L sheetings—that is, any sheetings stamped with the letters L L; is that so?

Ans. No, sir.

X Q. 2077. Did you ever purchase any L L sheetings?

Ans. Yes, sir. You mean the same as double L, I suppose?

X Q. 2078. What double L sheetings have you purchased?

Ans. Lawrence and Atlantic.

X Q. 2079. Is that all?

Ans. Yes, sir.

X Q. 2080. Did you ever handle any other L L sheetings than those last spoken of by you?

Ans. I think I have. I think Badger State L L some years ago. We don't have any now.

X Q. 2081. How many years since you handled the Badger State L L?

Ans. I could not answer.

326 X Q. 2082. Give us your best judgment as to the length of time?

Ans. About six or seven years back.

X Q. 2083. How long have you handled the Lawrence L L?

Ans. Between three and four years.

X Q. 2084. How long have you handled the Atlantic L L?

Ans. About eight months.

X Q. 2085. What difference, if any, is there in the weight of the Atlantic L L and the Lawrence L L?

Ans. I could not tell. One is fine and the other is coarse.

X Q. 2086. What is the difference, if any, in the weight of the Badger State L L and the Lawrence L L?

Ans. I could not say.

X Q. 2087. What is the difference in the weight, if any, between the Badger State L L and the Atlantic L L?

Ans. I could not say.

X Q. 2088. When did you commence handling the Badger State L L?

Ans. That was six or seven years ago that I remember of.

X Q. 2089. At the time you handled the Badger State L L sheeting, six or seven years ago, did you handle any other L L sheeting?

Ans. I don't remember.

X Q. 2090. Didn't you at that time speak of those goods sometimes as L L sheetings?

Ans. That is something I don't remember. That is back a little way.

X Q. 2091. Were not those goods branded L L?

The WITNESS: What goods?

Mr. ALDRICH: What goods are we talking about?

The WITNESS: Badger State double L.

327 X Q. 2092. Were not the Badger State L L goods that you handled six or seven years ago branded L L?

Ans. To my knowledge, they were branded "Badger State L L."

X Q. 2093. Don't you know that you and your customers, when you handled these goods six or seven years ago, designated them as L L sheetings or goods?

Ans. No, sir.

X Q. 2094. Will you swear that you did not so designate them?

Ans. Well, I will have to ask you what you mean before I answer.

X Q. 2095. Did you not at that time, and your customers at that time, call these goods—that is, the Badger State L L—L L sheetings?

Ans. Well, when I spoke of them I would call them by name, Badger State double L, and the customers would not.

X Q. 2096. Then your customers called them L L, did they not?

Ans. No, sir.

X Q. 2097. What did your customers call them?

Ans. By the price we sold them at.

X Q. 2098. What was that?

Ans. It had been sold at seven and eight cents.

X Q. 2099. Did those prices ever vary?

Ans. What do you mean by that?

Mr. ALDRICH: Just what I say. Do you know what the word "vary" means?

Ans. I do.

X Q. repeated to witness.

Ans. I don't remember of ever selling at anything else—at any other price.

X Q. 2100. Then, when your customers wanted Badger
328 State L L sheeting some one of them would call for seven-cent sheetings and some for eight-cent sheetings, would they?

Ans. I don't know that any of them wanted Badger State particularly.

X Q. 2101. Then customers, when they called for brown sheetings, called for the priced goods they wanted and not for their name branded on them, did they not?

Ans. Yes, sir.

X 2102. That is generally true throughout your experience in selling brown muslins, is it not?

Ans. Yes, sir.

X Q. 2103. What do the letters L L mean on Badger State sheetings—that is, what impression does it convey to your mind?

Ans. I suppose a trade-mark.

X Q. 2104. Who makes the Atlantic L L?

Ans. I don't know.

X Q. 2105. Who makes the Lawrence L L?

Ans. I don't know who makes the Lawrence L L either.

X Q. 2106. What is branded on the Lawrence L L sheeting besides the letters L L?

Ans. "Lawrence" and "sheeting."

X Q. 2107. Is that all?

Ans. All that I remember, besides the yards.

X Q. 2108. Look at Exhibit No. 1, now held up before you, and state if you recognize that as the Lawrence L L sheeting.

Ans. (Witness looking at said exhibit.) I couldn't answer.

X Q. 2109. State what you see on Exhibit No. 1, now held up before you.

Ans. I see the brand on it.

X Q. 2110. Describe the brand particularly.

Ans. Lawrence Mills sheetings, L L."

X Q. 2111. Is there anything above the word "Lawrence;" if so, what?

Ans. A bull, if you may call it so.

329 X Q. 2112. Is not the picture of the bull as conspicuous as the word Lawrence and as plain to be seen?

Ans. Plain to be seen, but in buying we naturally look at the reading matter.

Defendants object to all of the answer after the word "seen" as being volunteered by the witness and not responsive.

X Q. 2113. Then you look at the words "Lawrence Mills" in buying, do you?

Ans. Certainly; L L with it.

X Q. 2114. Look at Exhibit No. 2, now held up before you, and state if you recognize that as Lawrence L L sheetings.

Ans. Yes, sir (referring to said exhibit).

X Q. 2115. Please take Exhibits Nos. 1 and 2 in your hands and state the difference between them, if any.

(Witness here felt of the goods.)

Ans. So little I cannot see it.

X Q. 2116. Is there any difference in the brand by which you recognize Exhibit No. 2 as Lawrence L L sheetings and do not recognize Exhibit No. 1 as such?

Ans. I think I have seen the bull's head alone.

X Q. 2117. So to determine the real Lawrence L L you look for the bull's head aside or in addition to the word "Lawrence?"

Ans. No, sir; I look for the double L with "Lawrence."

X Q. 2118. Do you ever look for the bull's head?

Ans. Not in buying.

X Q. 2119. Did you ever buy any Lawrence L L sheeting without the bull's head on it?

Ans. I am not positive.

X Q. 2120. Did you ever buy any Lawrence L L sheetings without the words "Lawrence Mills" upon it?

Ans. No, sir.

330 X Q. 2121. Did you ever handle or buy the Shawmut L L sheeting?

Ans. Don't think I did.

X Q. 2122. Did you ever see any Shawmut L L sheeting?

Ans. No, sir; I don't think so.

X Q. 2123. You say you handled the Badger State L L sheeting years prior to your handling the Lawrence or Atlantic L L? Is that correct?

Ans. Yes, sir.

X Q. 2124. And you say that you understood the letters L L on the Badger State sheeting to be a trade-mark. Is that correct?

Ans. No, sir.

X Q. 2125. What did you understand the letters L L on the Badger State sheeting to mean?

Ans. I didn't understand them to mean anything; I supposed they were a trade-mark.

X Q. 2126. It was before you had any acquaintance with the Lawrence L L that you supposed the letters L L on the Badger State sheeting to be a trade-mark, was it not?

Ans. Yes, sir.

X Q. 2127. When you first saw the letters L L under the words "Lawrence Mills sheetings" did you think that they were the same as the Badger State L L, and manufactured by the same company?

Ans. No, sir; I thought they were different.

X Q. 2128. What made you think they were different?

Ans. Different heading.

X Q. 2129. What is the difference in the heading that made you think that the Lawrence Mills L L sheetings were not manufactured by the same mill as the Badger State L L's were?

Ans. I thought they were different because they were under different headings—one the Lawrence Mills L L sheeting and the other the Badger State.

331 X Q. 2130. Then you understand that the words "Lawrence Mills" stamped on their L L sheetings indicate the maker of the goods?

Ans. No, sir.

X Q. 2131. What do you understand that it indicates?

Ans. Well, the name of the sheeting.

X Q. 2132. Does not the words "Lawrence Mills" indicate, when seen upon goods, that those mills are the makers thereof?

Ans. It seems so.

X Q. 2133. Is not that your understanding of it?

Ans. I could not say.

X Q. 2134. Is that your understanding or is it not?

Ans. I could not say. I don't know whether it means those mills or not.

X Q. 2135. If you see the letters L L branded upon sheetings without the words "Lawrence Mills" of the same grade as the Lawrence does that indicate to you that it is made by the same company as the Lawrence L L?

Ans. No, sir.

X Q. 2136. Then you have to see the words "Lawrence Mills" branded upon the goods before you understand the goods to be what you call Lawrence L L sheetings, do you not?

Ans. Well, if anybody should ask me for double L sheeting I should give them Lawrence.

Answer objected to by counsel for defendants as not being responsive.

X Q. 2136 is here repeated to witness.

Ans. My answer would be, in looking at them I would look to see Lawrence L L; in speaking of them double L would be sufficient.

The latter part of the answer objected to by counsel for defendants as not being responsive.

332 X Q. 2136 repeated to the witness and a direct answer called for.

Ans. The best answer I can give is that when I look at them I look for "Lawrence Mills sheetings L L."

X Q. 2137. What grade of sheeting is the Lawrence double L?

Ans. I could not answer, if you mean count or weight.

X Q. 2138. How many grades of sheeting does the Lawrence Mills make?

Ans. I don't know.

X Q. 2139. Don't you know that there is the Lawrence Mills L L, Lawrence Mills X X, and Lawrence Mills X X X?

Ans. I know of the Lawrence Mills double L and not the others.

X Q. 2140. Do you know what grade of sheeting the Badger State L L is?

Ans. No, sir.

X Q. 2141. Do you know whether the Badger State L L is of the same or a different grade from that of the Lawrence L L?

Ans. I don't know.

X Q. 2142. Does L L, when stamped on sheetings, mean Badger State sheetings any more than it does Lawrence sheetings?

Ans. No, sir; I don't think it does.

JOHN W. SPENGLER.

ADAM L. GLOCK, a witness produced by complainant, being first duly sworn, deposes and says:

Q. 2143. State your name, age, residence, and occupation.

Ans. Adam L. Glock; age, 32; residence, Chicago, Illinois; occupation, in the retail dry-goods business, in the employ of W. R. Weiboldt, 243 Blue Island avenue, Chicago.

Q. 2144. How long have you been in the dry-goods business in Chicago?

Ans. In Chicago, five years.

333 Q. 2145. Were you in business before you came to Chicago, and for how long?

Ans. Sheboygan, Wisconsin; was eight years there.

Q. 2146. State whether you have handled, and, if so, for how long, brown muslins stamped with L L?

Ans. It is pretty hard telling. I remember for the last five years, since I have been here in Chicago. I may have handled it before.

Q. 2147. What special sheeting branded with L L have you handled?

Ans. I have handled Lawrence L L, Aurora L L, and Badger State L L.

Q. 2148. During these past five years should any one mention to you L L sheeting what would you understand him to mean or refer to?

Objected to by defendants as calling for the individual opinion of the witness and not for any fact.

Ans. Well, I would always take Lawrence L L.

Q. 2149. What are your special duties; do you buy or sell for your firm?

Ans. Sell.

Cross-examination by defendants' counsel:

X Q. 2150. Your experience in L L sheetings, so far as you now remember, is confined to the last five years?

Ans. Yes, sir.

X Q. 2151. When did you first begin to handle the Aurora and when the Badger State?

Ans. About the same, as I remember, but not so much, though, and not as well, either.

334 X Q. 2152. That is to say, your experience with those two brands dates about the same time as your experience with the Lawrence L L?

Ans. No; not about the Aurora L L. I remember the Badger State longer than the Aurora.

X Q. 2153. Your acquaintance, then, with the Badger State and the Lawrence, so far as you remember, dates from the same time?

Ans. About the same time. I remember Badger State about the same time, I think, as Lawrence.

X Q. 2154. Now, these several goods have, so far as you know, been generally called and known as Lawrence L L, Badger State L L, and Aurora L L, have they not?

Ans. Yes, sir.

X Q. 2155. They have been customarily advertised to the trade under those respective names, have they not?

Ans. Not that I know of. We advertise—just advertise for L L sheetings.

X Q. 2156. I was not speaking of the special custom of your house, but generally of the trade. Are they not so advertised in the books of the jobbers and in other ways in which such goods are customarily advertised; so far as you know, is not this true?

Ans. Yes; I have saw them advertised.

X Q. 2157. And that is the general way, so far as you know, is it not?

Objected to by complainant's counsel because the advertisements themselves are the best evidence.

Ans. Well, I don't know nothing about that.

X Q. 2158. To your mind what does L L printed on the Badger State goods mean?

Ans. Well, I don't know.

335 X Q. 2159. To your mind what does L L printed on the Lawrence Mills sheeting mean?

Ans. That's their trade-mark.

X Q. 2160. Do you understand that L L on the Badger State is their trade-mark?

Ans. I do not.

X Q. 2161. You have known the goods for the same length of time?

Ans. Yes, sir; about the same time.

X Q. 2162. Who told you that L L printed on the Lawrence sheeting is their trade-mark?

Ans. I saw a notice of it.

X Q. 2163. When and where did you see it?

Ans. I saw it in our store where I am working and on the goods.

X Q. 2164. When?

Ans. I noticed it some time ago on the goods when handling them.

X Q. 2165. When did you first see any notice that L L printed on Lawrence sheeting was a trade-mark?

Ans. I can't give any special time, because I did not——

X Q. 2166. Have you seen such a notice within the last week?

Ans. I saw it yesterday, selling goods.

X Q. 2167. Did you see it any day this week before yesterday?

Ans. Yes, sir; I seen it pretty near every day.

X Q. 2168. Since what time have you been seeing such a notice?

Ans. I answered that question once before; I can't give any specified time.

X Q. 2169. Did you see such a notice as long as one month ago?

336 Ans. I could not tell, because I did not have my attention drawn to it.

X Q. 2170. Did you see such a notice as long as two months ago?

Ans. I just answered the question as to a month ago; I could not answer it any different.

X Q. 2171. Did you see such a notice as long as three months ago?

Ans. The other answer covers the ground.

X Q. 2172. Then you swear that you have seen such a notice within the last week, but cannot swear whether you ever saw it as long as a month ago from this time?

Ans. Yes, sir.

X Q. 2173. Now, I will ask you if you ever saw such a notice as long as six months ago?

Ans. The answer to the other questions before covers the same ground.

X Q. 2174. To the best of your recollection and belief, did you see such a notice as long as one month ago?

Ans. To the best of my knowledge, I don't remember.

X Q. 2175. Have you no recollections or remembrance whatever on that subject as embraced in the last question?

Ans. No, sir.

X Q. 2176. You never had any information or understanding that L L stamped upon Lawrence sheetings was a trade-mark until the time when you first saw said notice; is this correct or not?

Ans. That is correct.

X Q. 2177. Then you cannot swear that as long as one month ago you understood that L L branded on Lawrence sheetings was a trade-mark?

Ans. I can't swear that it was a trade-mark, but I knew it was their mark; that is all I knew about it.

337 X Q. 2178. Knew it was whose mark?

Ans. Lawrence Mills—that is, not their trade-mark.

X Q. 2179. Before that time, you simply knew that the Lawrence Mills branded L L on their brown sheeting just as L L was also branded on the sheeting of those mills making the Aurora and Badger State?

Ans. Yes, sir.

X Q. 2180. Then, up to the time that you saw a notice that L L was a trade-mark of the Lawrence Mills, L L in your mind was connected equally with the Aurora, the Badger State, and the Lawrence sheetings, being branded on all of them, was it not?

Ans. I always thought it was the name of the sheetings—of the goods.

X Q. 2181. That is when applied to Aurora, Badger State, or Lawrence, and branded on the goods with the words "Aurora," "Badger State," or "Lawrence Mills," L L meant the L L sheetings of each of those brands, respectively?

Ans. I don't understand the question. It means the names of the goods.

X Q. 2182. Did you understand that L L branded on the Badger State goods meant Lawrence L L?

Ans. No, sir.

X Q. 2183. Or that when branded upon the Aurora is meant Lawrence L L?

Ans. No, sir.

X Q. 2184. You never saw L L branded on any Lawrence sheeting unless in company with the picture of a bull or a bull's head, and the words "Lawrence Mills," did you?

Ans. No, sir.

X Q. 2185. In identifying Lawrence L L sheeting you look for the words "Lawrence Mills" as denoting the name of the maker of the goods, do you not?

Ans. Yes, sir.

X Q. 2186. Do you not know that L L branded on brown
338 sheetings is understood generally to indicate that the goods on which it is branded is of a certain general grade of brown sheetings, thus distinguishing it from other general grades known in the market?

Ans. Yes, sir.

Redirect examination by Mr. W. G. RAINEY:

R. D. Q. 2187. While double L may mean and designate a particular grade of muslin, yet, is it not a fact, that to you it means muslins made by the Lawrenee Company?

Ans. If anybody would come into the store and ask me for L L sheetings, I would hand them Lawrence L L, because we have it always in stock, most of the time anyway. That is the reason why I understand it as Lawrence L L.

ADAM L. GLOCK.

At this point the further taking of testimony was adjourned to to-morrow, Saturday, July 31st, 1886, at 10 o'clock a. m.

Met, pursuant to adjournment, Saturday, July 31, 1886, at 10 o'clock a m.

Present: Same parties as before.

BURNET MANDL, a witness produced by complainant, being first duly sworn, deposes and says:

Q. 2188. State your name, age, residence, and occupation.

Ans. Burnet Mandl; age, 49; residence, 445 Dearborn avenue, Chicago, Illinois; occupation, dry-goods merchant; 353 Division street, North Side, Chicago; been in the dry-goods business since 1860, and always at Chicago.

Q. 2189. State whether you have handled, and if so, for how long, coarse brown muslins stamped with the letters L L.

Ans. To my recollection, twelve years anyhow I have handled them.

339 Q. 2190. During these twelve years, should any one mention to you double L muslin, what would you understand them to refer to?

Defendants except to foregoing question as calling for the individual opinion of witness and not for any understanding or custom of trade.

Ans. Lawrence double L.

Q. 2191. State whether or not that is the general understanding in the trade with which you are familiar.

Ans. It is.

Q. 2192. Please state also whether or not your customers ever inquire for such sheetings simply as double L sheetings.

A. They do.

Q. 2193. What sheetings do you show them when they inquire for double L sheetings?

This and the foregoing question are excepted to as irrelevant and incompetent, because they limit the understanding and practice to the customers of one house and do not cover the general public buying such goods.

Ans. Lawrence double L.

Cross-examination by defendants' counsel:

X Q. 2194. Under what name or with what firm are you now in business, and have you been in business since 1860?

Ans. I am now buying for my son. I have been by myself since 1863. I worked for C. N. Estein before that.

X Q. 2195. Under what name do you conduct your business?

Ans. Sidney Mandl.

X Q. 2196. Your name is B. Mandl and you conduct your business as Sidney Mandl?

340 Ans. I am buying for Sidney Mandl; I don't conduct the business now, but am buying for my son since May last, and before that I was in business for myself, under the name of B. Mandl, at 353 Division street, Chicago?

X Q. 2197. Where does your son, Sidney Mandl, do business?

Ans. At 353 Division street.

X Q. 2198. Have you handled any other brown sheetings of the grade known as four yards to the pound?

Ans. I never weighed them.

X Q. 2199. Do you know whether Lawrence L L sheeting is what is called a 2-85-yard sheeting—that is, that it takes 2-85 yards of the same to make a pound?

Ans. I do not.

X Q. 2200. Do you know whether it is a 5-yard sheeting—that is, that it takes five yards of the same to weigh a pound?

Ans. I do not.

X Q. 2201. Don't you know anything about the grade of the Lawrence L L sheeting, according to weight, as distinguished from other grades by weight?

Ans. I go by comparison.

X Q. 2202. Are there any recognized grades of brown sheeting in the market distinguished from each other by general conformity to different standards of weight?

Ans. I suppose there are.

X Q. 2202½. Do you know?

Ans. The different grades?

Mr. DICKINSON: I repeat my former question and ask you if you know?

Ans. I think there is.

X Q. 2203. What are the general grades of brown sheeting?

Ans. The Lawrence, Aurora, Atlantic L L. I can't remember all of them.

341 X Q. 2203. I did not ask you for the names of brands, but asked you to name the separate grades which you say exist in brown sheetings which differ from each other according to weight.

Ans. There is the Pepperell, the Honest Weight—I can't remember all.

X Q. 2205. Well, these are names of simple brands of goods, are they not?

Ans. They are.

X Q. 2206. Now, all that you have mentioned—that is, the Lawrence, the Aurora, the Atlantic, the Pepperell, and the Honest Weight, belong to separate and distinct grades of brown sheetings, said grades distinguished from each other by weight, do they or not?

Objected to by counsel for complainant as not proper cross-examination, and the same protest and notice is given as heretofore in the deposition of C. A. Teague.

Ans. I think so.

X Q. 2207. How many brands of L L sheeting have you handled in your experience with that goods?

Ans. For the last few years only three—the Lawrence, Atlantic, and Aurora.

X Q. 2208. How long have you handled each of them, so far as you remember?

Ans. Handled the Lawrence always, except when I could not get it. Atlantic I only had on and off, when I could not get the Lawrence—substitute for the Lawrence.

X Q. 2209. Then, when you could not get the Lawrence goods for your customers, you bought the Atlantic and sold it to them in its place?

Ans. I did.

X Q. Please state how long since you first began to handle the Atlantic.

Ans. To my recollection, not more than a year.

342 X Q. 2211. Now, how long since you first handled the Aurora?

Ans. That is easy told, because I bought it only once, about four weeks ago.

X Q. 2212. Then you have handled the Lawrence constantly, except at short intervals, since 1860, the Atlantic for about a year, and the Aurora only within the last month; is or not that correct?

Ans. That is not correct. You say 1860 and I did not say 1860. I want no misrepresentations.

X Q. 2213. Did you not say in your answer to X Q. 2166 that you "had handled the Lawrence always except when I could not get it?"

Ans. I did.

X Q. 2214. Now, I asked you in X Q. 2166 how long you had handled the Lawrence. Now, please answer that question.

Ans. About twelve years.

X Q. 2215. Then you handled the Lawrence goods for eleven years before you had any personal experience with any other brown sheeting branded L L?

Ans. I like the Lawrence double L better than other brands.

Answer excepted to by defendants as not responsive, and the question is repeated to the witness.

X Q. 2215 repeated to witness.

The WITNESS: I see other brown sheetings and I liked that the best. I think that is the only answer I can give.

Answer excepted to by defendants as not responsive, and the question is repeated to witness.

X Q. 2215 repeated to witness.

The WITNESS: I don't answer that at all.

343 X Q. 2216. Then you refuse to say whether or not you had any personal experience with any other L L sheeting besides the Lawrence during the eleven years next preceding a year before this date?

Objected to by counsel for complainant, as the witness has not refused to answer the question.

Ans. I did.

X Q. 2217. Do you mean by that answer that you so refuse to answer or that you did have personal experience within the time mentioned of other L L sheetings?

Ans. By examining others I have had experience.

X Q. 2218. What other L L sheetings during said period of eleven years did you examine, and at what times?

Ans. A dozen different brands.

X Q. 2219. Name all those which you remember and the times at which you examined them, respectively.

Ans. Can't name any; I don't know any names.

X Q. 2220. Then you can't name any L L sheeting besides the Lawrence with which you had any experience whatever during the eleven years designated?

Ans. No.

X Q. 2221. How do you know the Lawrence L L sheeting?

Ans. By the brand.

X Q. 2222. How do you know the Aurora L L sheeting?

Ans. It is not as nice as the other.

X Q. 2223. Do you know it because it is not as nice, and can you so distinguish it without looking at the brand?

Ans. I think so.

344 X Q. 2224. How do you know the Atlantic L L sheeting?

Ans. It is coarser.

X Q. 2225. Coarser than the Lawrence?

Ans. I think so.

X Q. 2226. By coarser you mean heavier?

Ans. I do not.

X Q. 2227. What do you mean by coarser?

Ans. Loose and heavier thread.

X Q. 2228. Are the Lawrence and Atlantic both coarse brown sheeting or both fine brown sheetings?

Ans. One is fine and one is coarse.

X Q. 2229. Well, which is fine and which is coarse?

Ans. Lawrence is fine and Atlantic coarse.

X Q. 2230. What is branded on the Lawrence L L sheeting?

Ans. Lawrence L L.

X Q. 2231. Anything else?

Ans. I suppose there is.

X Q. 2232. If you know, please state what else.

Ans. I never looked at the other names.

X Q. 2233. Please examine Exhibit No. 1 filed in this cause, here held up to your view, and state whether you recognize that and would call it Lawrence L L sheetings.

Ans. Yes.

X Q. 2234. Please examine Exhibit No. 2, held up to your view, and state whether or not you recognize that and would call it Lawrence L L sheetings.

Ans. By the print, yes.

X Q. 2235. Why would you recognize these two samples as being Lawrence L L sheetings?

Ans. By the print.

X Q. 2236. What part of the print?

345 Ans. "Lawrence L L" and the bull.

X Q. 2237. You never saw any Lawrence L L sheeting unless it had branded on it a bull or a bull's head and the words "Lawrence Mills," did you?

Ans. That I can't say. There may be some other L L's.

X Q. 2238. Do you remember of ever having seen any other goods known and recognized as Lawrence L L unless it had branded on it the picture of the bull or bull's head and the words "Lawrence Mills?" If so, state when and where.

Ans. I think there is another Lawrence L L, but I can't remember the bull, as I never took any notice of it.

X Q. 2239. Do you mean to say that you think you have seen a brown sheeting made by the Lawrence Mills branded "Lawrence Mills L L," but without the picture of the bull or the bull's head?

Ans. I do.

X Q. 2240. Please state when and where you saw this goods.

Ans. In the wholesale houses here.

X Q. 2241. In what wholesale houses?

Ans. Marshall Field's, and, I think, Carson & Pirie.

X Q. 2242. Within what period of time?

Ans. Within a short time, when I have been buying goods.

X Q. 2243. When did you last get any Lawrence L L sheeting in your stock?

Ans. About six weeks.

X Q. 2244. You have bought none since then?

Ans. No.

X Q. 2245. Did that have any picture of a bull or bull's head on it?

Ans. I can't say. I never look.

X Q. 2246. Did it have the words "Lawrence Mills" on it?

Ans. I examined the goods and always do. I never look for pictures. I never buy goods by brand.

346 X Q. 2247. What do you buy them by?

Ans. What suits me the best.

X Q. 2248. You feel the texture and if it suits you you buy it, and if it don't you reject it?

Ans. Yes.

X Q. 2249. Did that goods which you bought six weeks ago have L L branded on it?

Ans. Yes.

X Q. 2250. Are you positive about that?

Ans. Yes, sir.

X Q. 2251. You remember that the goods had double L on it, and are positive about that, but can't remember whether it had the bull or the bull's head, or the words "Lawrence Mills;" is that correct or not?

The witness refuses to answer, and says he will answer no more questions.

X Q. 2252. Now, if you have handled Atlantic sheeting and Aurora sheeting and Lawrence sheeting and all of them are branded L L, why is it that you call the Lawrence sheeting L L's and do not call either of the others L L's?

Ans. I did not state so.

X Q. 2253. Possibly I do not understand you. What do you mean when you say that you did not state so?

Ans. I can't go beyond the stamp, can I, if it is branded double L, all of it?

X Q. 2254. Then you know them equally as L L sheetings?

Ans. Yes.

X Q. 2255. If a person then should call for L L sheeting, and you had all three, you would not necessarily understand that he meant Lawrence, would you?

Ans. If we handled Lawrence generally, why it is.

X Q. 2256. If you had on hand the Lawrence, the Aurora,
347 and the Atlantic L L's, and handled them all at the same time, and a person should call for L L sheetings, might he not mean Atlantic L L, or Lawrence L L, or Aurora L L?

Ans. We will give them the best value for their money.

X Q. 2257. Is that the only answer you will give to that question?

Ans. That is the only answer I can give.

X Q. 2258. That, then, is because you have handled the Lawrence longer and consider it the best of the three; is that true or not?

A. Yes, sir.

X Q. 2259. Now, leaving out your estimate of value, not considering that at all, suppose a person should call for L L sheetings and you had on hand the Aurora, the Atlantic, and the Lawrence at the same time, does the use of that expression necessarily imply that he means any particular one of those three brands?

Ans. No.

B. MANDL.

The further taking of testimony was adjourned to two o'clock p. m., this day.

Met, pursuant to adjournment, at 2 o'clock p. m.

C. ERICKSON, a witness produced by the complainant, being first duly sworn, deposes and says:

Q. 2260. State your name, age, residence, and occupation.

Ans. C. Erickson; age, 47; residence, Chicago, Illinois; occupation, retail dry-goods merchant; my stores are at 228 and 230 Milwaukee avenue, and 1190 and 1192 Milwaukee avenue, Chicago. Milwaukee avenue is in the northwestern part of the city.

Q. 2261. What part of the city is Blue Island avenue?

Ans. Southwest.

348 Q. 2262. How long have you been engaged in business as a retail dry-goods merchant in Chicago?

Ans. About eighteen years.

Q. 2263. Have you purchased and sold coarse brown muslins stamped with the letters L L; and, if so, for how long?

Ans. The last fifteen years.

Q. 2264. Please mention the names of the coarse brown muslin stamped with L L that you have handled.

Ans. The Beaver Dam, Badger State, Shawmut, Pacolet, Atlantic L L. I think that is all.

Q. 2265. How long did you handle those double L's?

Ans. Well, I could not tell exactly; about ten years.

Q. 2266. Have you handled, and, if so, for how long, brown muslins stamped L L and known to your trade as Lawrence goods?

Ans. Yes, sir; as long as I have been in the business I have handled Lawrence L L, to the best of my recollection.

Q. 2267. During this time should a jobber of dry goods ask you whether you wanted any double L muslins, what would you understand him to mean and refer to?

Defendants except to this question as calling merely for the individual understanding of the witness.

Ans. The Lawrence double L.

Cross-examination by defendants:

X Q. 2268. Why?

Ans. Because it is the best-known brand in the market.

X Q. 2269. These several goods are called in the trade Atlantic L L, Beaver Dam L L, Badger State L L, Shawmut L L, and Lawrence L L, are they not?

Ans. Yes.

349 X Q. 2270. Double L does not necessarily in the trade mean Lawrence any more than it would Badger State or Beaver Dam or Atlantic with those who are familiar with all four of those brands, would it?

Ans. No.

Redirect examination by Mr. W. G. RAINEY:

R. D. Q. 2271. While double L may not necessarily mean Lawrence goods, yet is it or not true that among the jobbing trade with which you are familiar, when double L is mentioned without stating anything more, that it is understood that it refers to the Lawrence goods?

Ans. Yes, sir.

Recross-examination by defendants:

Re-X Q. 2272. Please name the jobbers that you undertake to swear understand it in that way.

Ans. I understand it in that way.

Re-X Q. 2273. Are you a jobber or a retailer?

Ans. I am a retailer.

Re-X Q. 2274. Mention the names of the jobbers whom you will swear so understand it.

Ans. I could not say as to any jobber understands it in that way, but when, in my experience in the trade, a person is speaking about double L sheeting I have always supposed it to be Lawrence L L when no other brand has been mentioned.

Re-X Q. 2275. That is because you have been more familiar with Lawrence L L than with any other, is it not?

Ans. Yes, sir.

Re-X Q. 2276. Then you are giving your understanding and do not undertake to say that it is a general understanding in the trade and among jobbers?

Ans. Yes, sir; I gave my own understanding.

350 Redirect examination by Mr. W. G. RAINEY:

R. D. Q. 2277. Mention the names of the jobbers in Chicago from whom you buy double L sheetings.

Ans. Principally Marshall Field; John V. Farwell & Co.

C. ERICKSON.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, P. H. T. Mason, a notary public in and for the county of Cook, in the State of Illinois, do hereby certify that the foregoing depositions of Robert Hill, W. R. MacKendrick, Charles Sladeck, H. L. Pinney, C. H. Jones, Duncan Campbell, Alfred Taylor, E. W. Roepstorff, Adolph Lurie, Patrick Berkery, Charles A. Teague, R. W. Young, J. W. Spengler, Adam L. Glock, Burnet Mandl, and C. Erickson were taken before me in pursuance of notices heretofore served and by consent of the parties; that the said witnesses were severally sworn by me before the taking of their said depositions, and the said depositions were subscribed by each of said witnesses in my presence, the said witness Adolph Lurie being also sworn after he had subscribed to his deposition by request of counsel for defendants; that there were present at the taking of the said depositions Mr. J. M. Dickinson, representing the Tennessee Manufacturing Company; Mr. N. J. Aldrich, representing the Aurora Cotton Mills, and Mr. D. C. Givens, representing the Evansville Manufacturing Company.

I further certify that the fees for taking said depositions, witness fees, etc., paid by complainant, Lawrence Manufacturing Company, were as follows:

351	Notary's fees for taking same, swearing witnesses, etc.	$57 10
	Witness fees paid to six witnesses	9 00
	Fees for issuing subpœnas—16 witnesses	4 00
	Paid for serving subpœnas—16 witnesses	8 00
	Paid for mileage serving subpœnas	1 40
	Total	$79 50

Witness my hand and notarial seal this 31st day of July, A. D. 1886.

[SEAL.] P. H. T. MASON,
Notary Public in and for the County of Cook, in the State of Illinois.

Depositions for complainant, taken by agreement (previous notices having been served, but all formalities as to notice, caption, time and places, and certificates being waived) before Charles R. Clarke, a notary public in and for the city and county of New York, in the State of New York, at his office, 21 Park Row, in said city of New York, commencing on August 30th, 1886, at 11 o'clock a. m.

Present: Mr. J. H. Raymond, for complainant; Mr. N. J. Aldrich, for the Aurora Cotton Mills, and Mr. J. S. Frazer, representing the Tennessee Manufacturing Company, and also representing the Evansville Manufacturing Company.

MARTIN I. COOLEY, being first duly sworn and interrogated by Mr. RAYMOND, testified as follows:

Q. 2278. Please state your name, age, residence, and occupation.

Ans. Martin I. Cooley; age, 45; residence, Plainfield, N. J.; occupation, merchant in New York.

Q. 2279. You are now, I believe, in the dry-goods business?

Ans. Yes, sir.

352 Q. 2280. Please state what experience you have had, giving the number of years in the wholesale or jobbing dry-goods trade, stating also in what sections of the country.

Ans. I have been in the dry-goods business about twenty-five years, during which time I have distributed goods in almost every State in the Union.

Q. 2281. In that trade and during at least a considerable part of that time have you been familiar with the 4-yard brown sheetings made by the Lawrence Manufacturing Company and having upon its stamp or label the capital letters L L?

Ans. Yes, sir.

Q. 2282. So far as the trade or the public with whom you came in contact as specified had any definite and specific knowledge or understanding of the meaning of said letters, what has been that meaning, or, in other words, what have said letters imported or designated?

Ans. I supposed the letters to mean the Lawrence L L's.

Q. 2283. That is to say, goods made by the Lawrence Manufacturing Company?

Ans. Yes, sir.

Objected to by the defendants' counsel as leading.

Q. 2284. Has that been the understanding of the trade with which you have been familiar?

Ans. I think it has.

Objected to for same reason.

Q. 2285. You may state whether or not such has been the understanding in said trade during the past year and one-half, and whether or not such is the understanding to-day.

Ans. I think it is.

Q. 2286. How, please, are these goods talked about and quoted on the street—I mean by what name?

Ans. I think as double L.

353 Q. 2287. You may state what the public reputation of these goods is for excellence and uniformity.

Ans. These goods have a good reputation.

Q. 2288. Have they been known as L L goods ever since you first handled or met them in the trade?

Ans. Yes, sir.

Q. 2289. Have you met any other goods belonging to this same class stamped with L L; and, if so, of whose manufacture were they?

Ans. Yes, sir; the Pacolet; I think it is the Pacolet Manufacturing Company.

Q. 2290. You may state whether or not, in your opinion, the continued use of L L by the Pacolet Company would tend to deceive the trade or the public or any considerable proportion of either, and I include the consumers of these goods.

Objected to by the defendants' counsel as not calling for any fact and as being immaterial to the issues presented in these cases.

Ans. I think it would.

Q. 2291. Supposing it to be a fact that on one of those brands named open letters are printed and upon the others solid or block letters are printed, and that the letters L L on the Lawrence stamp should further differ from the letters on the Pacolet stamp in size by one-eighth or one-quarter of an inch, would such differences lead you to change or modify what you have stated as to the tendency to deceive the public?

Objected to by defendants as being irrelevant and calling for individual opinion of the witness or a state of facts not proved.

Ans. No, sir.

Q. 2292. How long have you known the Pacolet goods?

Ans. I think about three years.

354 Q. 2293. What do you say as to whether the adoption and use during recent years and the continued use hereafter by others than the Lawrence Manufacturing Company of the letters L L in stamping 4-yard sheeting is in accordance with the best rules of commercial integrity?

Objected to as irrelevant and calling for an individual opinion of the witness.

Ans. I should not think it was.

Q. 2294. You may state any reasons that you have for that opinion.

Ans. My principal reason for such an opinion is that I consider it imitating the marks and trade-marks of the Lawrence Manufacturing Company.

Q. 2295. Have you been familiar for a number of years with the brown sheetings made by the Atlantic Mills and stamped with L L?

Ans. No, but I have known of such goods in the market. We never handled them in our firm to any extent.

Q. 2296. Please state what the differences are between the — L L's and the Atlantic L L's and state whether they are in competition with each other or are confounded or likely to be confounded for each other.

Ans. The difference is in the weight of the goods; they are never confounded for each other for just the reason the difference of the weight in the goods.

Q. 2297. Would you or would you not say they belong to different classes of goods in the cotton trade which are well defined?

Ans. I should say that the difference was well defined.

355 Cross-examination by Mr. FRAZER:

X Q. 2298. What other stamp or label is there on the 4-yard goods made by the Lawrence Mills other than L L?

Ans. There is a picture, as I remember, of a bull's head. I think the bull's head is on the top; then the L L; then, I think, the Lawrence Manufacturing Company appears on the goods.

X Q. 2299. Do you know, in the trade, a class of goods made by the same company stamped X X; if so, what is the label on those goods?

Ans. I don't remember; I know there is such a brand of goods, but I don't remember the appearance of the label on the goods.

X Q. 2300. Have you ever handled the last-mentioned goods in the trade?

Ans. Yes, sir.

X Q. 2301. What do you understand X X to indicate on these goods?

Ans. I suppose it is meant to indicate the quality of the goods or a brand or name of the goods.

X Q. 2302. Do you know in your trade a class of goods made by the same company branded X X X?

Ans. I ain't positive whether they make a brand of X X X or not.

X Q. 2303. What is the weight of the goods branded X X?

Ans. I don't know the weight of the goods.

X Q. 2304. Is the weight different from that made by the same company and branded L L?

Ans. I don't know the weight of the X X.

X Q. 2305. Do you know the weight of the L L made by this company?

Ans. The L L's are known as 4-yard goods.

356 X Q. 2306. When you desire to order from the complainant 4-yard goods how is your order made?

Ans. I should order the L L.

X Q. 2307. Then L L indicates to the trade that the weight is 4 yards to the pound, does it not?

Ans. I don't understand that necessarily; the trade know that it is 4-yard goods.

X Q. 2308. Same question repeated.

Ans. Not necessarily.

X Q. 2309. What does L L indicate when stamped on brown cotton?

Ans. It indicates to me the trade-mark of the Lawrence Manufacturing Company.

X Q. 2310. Do you know what it indicates to the trade?

Ans. No, sir; I do not, except as I have stated—a brand of the Lawrence Manufacturing Company's goods.

X Q. 2311. Did you ever see L L stamped on any brown cotton made by complainant without the accompanying bull's head and the Lawrence Manufacturing Company or Lawrence Mills?

Ans. I think not; no, sir; I have not.

X Q. 2312. Is not the 4-yard goods made by the complainant known to the trade as Lawrence L L?

Ans. I think they are known to the trade as L L; I think that implies the whole thing.

X Q. 2313. Are they not spoke of among merchants as Lawrence L L?

Ans. I think, very likely; I think they are.

X Q. 2314. Are not the Lawrence X X known to the trade and spoken of as Lawrence X X?

357 Ans. Yes, sir; I think so.

X Q. 2315. How are these Lawrence goods, L L and X X, invoiced to you by complainant?

Ans. They are invoiced so many bales as L L and so many bales of X X at the price, whatever the price may be.

X Q. 2316. Without any other accompanying descriptive words?

Ans. Without any other descriptive words, as I remember.

X Q. 2317. How do you invoice them to your customers, as Lawrence L L and Lawrence X X?

Ans. I think it has been our custom to invoice them as Lawrence L L and Lawrence X X.

X Q. 2318. Has your firm during the period named by you sold any 4-yard brown cotton other than that made by complainant? If so, how were they stamped?

Ans. We sold a variety of cotton of all grades and weights, such as would be handled by the domestic jobber. Among other 4-yard goods we have sold the Pacolet L L 4-yard goods. I don't remember what device they have. We had a variety of brands—an innumerable variety of stamps.

X Q. 2319. Have you handled any other L L goods than the Lawrence and Pacolet?

Ans. No, sir; I think not.

X Q. 2320. Do you know a brand of L L goods stamped Shawmut L L?

Ans. I have never seen the goods. I don't know the brand.

X Q. 2321. Do you know whether the Lawrence Company brands any other of their goods with the bull's head?

Ans. No; I don't know.

X Q. 2322. Do you handle any other of their goods than the L L?

358 Ans. We have handled in the past other of their goods, but I have not been in the jobbing business since the 1st of January last, when I went into the dry-goods commission business.

Redirect examination:

R. D. Q. 2323. In your cross-examination you stated that complainant's 4-yard goods were known generally as double L's and other of its goods were quoted in the trade as "Lawrence X X," and stated a reason therefor which does not appear upon the record. Please state that reason.

Ans. The reason stated was that the X X's were quoted as Lawrence X X, because there were so many other goods of the same kind used with the X X's, to designate grade or quality of the goods.

Recross-examination:

Re-X Q. 2324. Do you mean by your last answer that there are brown cottons made by other mills weighing 4 yards to the pound which are branded X X?

Ans. I meant by my answer that there were cottons of all grades and counts and weights branded X, X X, or X X X. I think there may be some of them 4-yard goods.

Re-X Q. 2325. Do you know it?

Ans. I don't remember any particular ones now brown, but I do remember one bleached.

Re-X Q. 2326. Do you know of any brown cotton made by any other mill than complainant, of the same weight as that made by complainant, which is branded X X?

Ans. I don't know the weight of the Lawrence X X.

—X Q. 2327. Suppose the Lawrence X X weighs $3\frac{20}{100}$ yards to the pound, do you know any brown cotton made by any other mill of that weight and branded X X?

A. No, sir.

MARTIN I. COOLEY.

359 Mr. NATHAN HOBART, being first duly sworn and interrogated by Mr. Raymond, testified as follows:

Q. 2328. Please state your name, age, residence, and occupation.

Ans. My name is Nathan Hobart, age, 56; live in the city of New York; occupation, dry-goods merchant.

Q. 2329. Please state how long you have been in the dry-goods business and with what trade, specifying with what sections of the country you have been familiar.

Ans. Over 40 years doing business with all sections of the country, more largely with the North and East.

Q. 2330. Have you been familiar; and, if so, how long, with the brown cottons weighing 4 yards to the pound, made by the Lawrence Manufacturing Company?

Ans. I have known this as a prominent brand probably for 20 years or more.

Q. 2331. By what trade name, if any, are those goods known and have they been known?

Ans. As L L, or Lawrence L L.

Q. 2332. Are you familiar with the stamp which appears and has appeared upon those goods? And, if so, you may state what the principal or substantive part thereof is.

Ans. The words "Lawrence L L" is all I remember; whether the cloth is stamped with the vignette, as is usually the case, I do not remember, not having been much in the jobbers' stores of late years.

Q. 2333. To that part of the trade in which these cottons are known simply as L L, what do those letters denote or signify?

Ans. In this part of the country, certainly, they mean the Lawrence L L goods; and, so far as I know, is so generally through the country.

360 Q. 2334. You are a member of the firm of Minot, Hooper & Company, large commission merchants in the dry-goods trade, are you not?

Ans. Yes.

Q. 2335. What about the public reputation of these goods for excellence and uniformity?

Ans. Has always been very high.

Q. 2336. They have always been stamped or branded L L ever since you have known them, have they not?

Ans. Yes.

Q. 2337. You may state whether or not it is a fact that the reputation of which you have just spoken has grown up and been maintained under and in connection with the trade name referred to.

Ans. Yes; it is.

Q. 2338. By what trade names are other brown cottons belonging to this same class known and by what have they been known during the last 20 years? I refer to 4-yard goods.

Ans. Usually by the name of the mill in which they are made, although it is a common custom to choose a fancy name.

Q. 2339. Will you name any of those?

Ans. Yes; we had a competing make ourselves, which we called the "Lyman T," but the Lawrence goods were better and trod us out. Of other 4-yard sheetings I think the "Atlantic P" has been the most prominent brand.

Q. 2340. Have you been aware of the "Pacelot L L" in the market?

Ans. I have heard the brand spoken of.

Q. 2341. Would the continued use by the defendants upon 4-yard brown cottons of the L L tend to deceive the trade or the public or any substantial portion of either?

Objected by the defendants' counsel as leading, irrelevant, and calling for the individual opinion of the witness.

Ans. I feel sure that it would.

361 Q. 2342. Please state whether or not all 4-yard brown cottons with which you have been familiar are put up with substan-

tially the same fold, about 18 inches wide, and whether they do not differ in this regard from brown cottons belonging to other classes.

Ans. Nearly all 4-yard brown cottons are put up into 18-inch folds, as are the heavier weights; the lighter weights are put up in narrow folds, as a rule.

Q. 2343. Please state what the following words signify or import in the trade: "Wamsuttas, Fruits, Pepperalls, Lonsdales, and Augustas," and whether, in connection with those words, letters of the alphabet are used, in the parlance of the trade, and you may state in what respect, if any, the use of these words respectively correspond to the use in the trade of the letters L L of which you have spoken.

Ans. These are the names used by certain large mills to designate their goods, and, although all or nearly all have letters used in connection with these names, the product of the principal style made by each of them is so large and the goods have become so well known under these names that the letters referred to are rarely used either in speaking of the different styles or in ordering the goods by the trade. In this respect the product of these large mills is in marked contrast with the 4-yard goods made by the Lawrence Manfacturing Company, these letters seeming to be a sort of pet name with the trade, so that jobbers and commission houses alike are accustomed to calling these goods "L L," instead of "Lawrence" or "Lawrence L L." In this market, certainly, any jobber receiving an order by mail for a bale of L L would not be surprised but would send the Lawrence L L goods.

Defendants except to so much of this answer beginning with the words "these letters seeming" to the end of the answer, as volunteered by the witness, irresponsive to the question, and irrelevant.

362 · Q. 2344. What do you say as to whether the adoption and use during recent years, and the continued use hereafter, by others than the Lawrence Manufacturing Company of the letters L L in stamping 4-yard sheetings is in accordance with the best rules of commercial integrity?

Defendants object to the question as being irrelevant and calling for an individual opinion of the witness.

Ans. In my judgment the great majority of the selling agents of the large corporations making cotton goods would advise the owners of the mills not to injure their competitors in this way, as it is done in this case.

Q. 2345. In the cotton-goods trade, in building up a trade reputation under a trade-mark, what difference, if any, does it make whether the product is large, moderate, or small?

Ans. It makes all the difference in the world. Goods being equally well made and sold with equal ability, the building up a national reputation for a brand of cotton goods mainly hinges on the amount of the product.

Q. 2346. If you are familiar, and have been for many years, with the goods stamped "Atlantic L L" and "Atlantic P," please state generally the comparitive products of these goods with that of complainant's 4-yard goods, and also the correspondences and differences between them in the trade.

Ans. The combined products of these two styles of Atlantic goods is and has been very much smaller than the product of the Lawrence L L, and the Atlantic Mills, making, as they always have, quite a variety of styles of brown cotton goods, the product of no one of which has been much greater than some others, have always been known by the trade as Atlantic A, H, P, L L, etc., the word Atlantic always being used in speaking of or designating the goods made by this mill.

Q. 2347. As a matter of fact, has there been any confounding in the trade or is there likely to be between complainant's 4-yard goods and Atlantic L L; and, if not, why not?

363 Ans. No; the immense product during many years of the L L brand of the Lawrence Manufacturing Company has led to a usage in the trade of saying L L when Lawrence L L is meant, while the other style is always called Atlantic L L, and the different fold and entirely different quality of the cloth leaves little, if any, chance of misunderstanding.

Cross-examination:

X Q. 2348. What department of business in your firm during recent years in which you have been engaged in the dry-goods business have you attended to?

Ans. Selling goods and general manager of the business.

X Q. 2349. As a commission merchant of cotton goods, how long have you been engaged in business?

Ans. Over 30 years.

X Q. 2350. As a commission merchant, you do not come in actual contact with the goods you sell, do you?

Ans. Yes; we have a sample bale of each style open in our salesroom so that the cloth can be seen and handled by our customers as well as by ourselves.

X Q. 2351. Do you sell the Lawrence L L brown cotton goods?

Ans. No, sir; we sell only the product of those mills that consign goods to our firm.

X Q. 2352. You speak of Atlantic L L; what does L L mean to the trade when stamped on Atlantic goods?

Ans. It means the 5-yards style made by those mills.

X Q. 2353. What does L L mean when stamped on Lawrence brown cotton goods?

Ans. It designates the style which is the principal product of these mills.

X Q. 2354. What style is that?

364 Ans. The 4-yards brown sheeting made by the Lawrence Company.

X Q. 2355. How long since you have seen the stamp or label branded upon the 4-yards brown cotton made by the complainant?

Ans. It may be a year or two, as I now seldom look over the jobber's stocks.

X Q. 2356. Do you ever remember to have seen L L brown cotton made by the complainant without the accompanying words "Lawrence Mills?"

Ans. No; only on their second quality goods.

X Q. 2357. How is the second quality, 4-yards, goods of complainant stamped?

Ans. Shawmut L L, so far as I know.

X Q. 2358. Double L when stamped on Lawrence brown cotton indicates to the trade 4-yard goods, does it not?

Ans. It does to all the large buyers, but to a great many it only means a favorite style that they have been in the habit of buying.

X Q. 2359. Are not the Lawrence L L brown cottons always stamped with a picture of a bull's head in addition to the words "Lawrence Mills L L?"

Ans. Now, that you mention the vignette used on this style, I remember that it is a bull's head and think the goods always bear that stamp.

X Q. 2360. Do you know any other 4-yard brown cottons stamped L L; if so, what are the brands?

Ans. The only style I remember having seen is the one stamped "Pacolet L L."

X Q. 2361. Do you sell goods in the foreign markets, especially that of China and Japan?

365 Ans. We do.

X Q. 2362. Do you know whether the Lawrence 4-yard brown cottons are sold in those markets?

Ans. I do not.

X Q. 2363. Do you know a style of brown cotton made by complainant stamped X X? If so, state what letters X X indicate to the trade.

Ans. I have seen the cloth; the name Lawrence and the letters X X are used to indicate the limited product of that style made by the Lawrence Company.

X Q. 2364. Is the same true of their brown cottons marked X X X?

Ans. It is.

X Q. 2365. Does not the brown cottons stamped X X and X X X differ from each other and from the L L in weight?

Ans. They do.

X Q. 2366. Are not these letters used by complainant to indicate to the trade the different weights or grades of their brown cotton goods? I refer to the X X, X X X, and L L's.

Ans. They are.

X Q. 2367. Is it not well understood in the trade that the Lawrence L L and the other 4-yards brown cotton stamped L L, such as the Pacolet L L, are made by different mills?

Ans. It is when both the words Lawrence and Pacolet are used when speaking of the two styles, respectively.

X Q. 2368. Is it not apparent upon an inspection of stamps that the goods are made by different mills?

Ans. It is when the buyer actually sees the goods.

NATHAN HOBART.

LOWELL LINCOLN, being first duly sworn and interrogated by Mr. RAYMOND, testified as follows:

366 Q. 2369. Please state your name, age, residence, and occupation.

Ans. Lowell Lincoln; New York city; 50 years of age; commission merchant and member of the firm of Catlin & Co.; this firm is the selling agent of the Atlantic Mills.

Q. 2370. I understand that the firms with which you have been connected for upwards of ten years have been the agents of the Atlantic Mills, having the exclusive sale of the product of said mills?

Ans. They have.

Q. 2371. You may please state whether there has been any confusion in the trade or any competition therein between the brown cottons made by the Atlantic Mills and stamped with the L L, on the one hand, and the 4-yard goods made by complainant and stamped with the same letters, and whether there is any likelihood of said goods being confounded in the trade for each other, and you may state any facts or reasons which may occur to you in the premises.

Objected to as irrelevant.

Ans. There has not been and there is no likelihood for any competition, because one is a 4-yard sheeting and the other is a 5-yard sheeting—two distinct grades.

Q. 2373. You may state whether or not there is a difference in these goods in the appearance and in the touch, and whether as a rule they have not been folded different.

Ans. There is a difference in appearance, feeling, and weight, and they have been as a rule folded differently, one as a 13-inch fold and the other 18 inches or about, the Atlantic being finer and lighter and being folded in 13-inch folds.

Q. 2374. Has the Atlantic Mills recently put up any 5-yard goods, and stamped the same L L and folded the same in a wide fold; and, if so, for whom and upon whose request was it done, and to what extent was this done?

367 Ans. We have lately sold to Marshal Field, and he requested the wide fold. It could not have exceeded 50 bales, but as to that I do not remember. We had previously put up a few in the broad fold, and they knew it and selected the broad fold, but the amount we put up in a broad fold were an inappreciable percentage.

Q. 2375. Were they 4 or 5 yard goods?

Ans. 5-yard goods.

Q. 2376. Has the Atlantic Mills since 1876 made any 4-yard brown cottons and stamped the same with L L—Atlantic L L?

Ans. No, sir.

Q. 2377. I understand your experience as sales agent for the Atlantic Mills began in 1876. Is that correct?

Ans. It is.

Q. 2378. Will you please state in round numbers what during recent years—say 5 years, more or less—the average output of the Atlantic L L 5-yard cotton has been?

Ans. It has varied from 30 to 65 bales a week, perhaps averaging 40 bales a week.

Q. 2379. This would be an average of between 40,000 and 50,000 yards a week, would it not?

Ans. It would.

Q. 2380. What do you say, Mr. Lincoln, as to whether the use and continued use by these defendants upon 4-yard brown cottons of the capital letters L L in their stamp is in accordance with the best rules of commercial integrity?

Ans. I do not think it is.

Excepted to above answer and question by defendants as leading, irrelevant, and calling for the individual opinion of the witness.

368 Cross-examination by Mr. FRAZER for all the defendants:

X Q. 2381. Does the Atlantic Mills manufacture different grades of brown cotton goods? If yes, please state what they are.

Ans. It does. They are the A, H, P, D, V, and L L.

X Q. 2382. What do those letters indicate when stamped on Atlantic goods?

Ans. They indicate the grades.

X Q. 2383. What does L L indicate when stamped on brown cotton made by the Lawrence Mill?

Ans. Indicates their 4-yard sheeting, I suppose.

X Q. 2384. Then it indicates a grade, does it not?

Ans. It does.

X Q. 2385. Is it not a well-established custom of manufacturers of cotton goods to indicate the different grades of their goods by the letters of the alphabet, either single or in connection with other letters or duplicate letters, in connection with the name of each mill, or some fancy name?

Ans. It is.

X Q. 2386. Is it not a fact that all or nearly all of the letters of the alphabet are thus used by the different mills?

Ans. It is.

X Q. 2387. Is it not a fact well known to the trade that these different letters of the alphabet are always used in connection with the name of the mill or some fancy name adopted by the mills for its goods, and thus stamped on the goods?

Ans. Yes; they are so stamped.

X Q. 2388. Is it a fact that any mill uses letters alone—that is, stamped on their goods to indicate the grade or quality, without the additional stamp of the name of the mill or some fancy name?

Ans. Not often. I don't absolutely know it of my own knowledge, but have an impression that it has been done.

369 X Q. 2389. Can you give any instance of it?

Ans. No.

X Q. 2390. Is it not a fact that it is only by use of the name of the mill or some fancy name that the manufacture of the goods is distinguished?

This, the previous, and any subsequent questions upon the same subject are objected to, together with the answers thereto, as irrelevant, incompetent, and not proper cross-examination, and defendants' counsel are requested to defer such testimony upon the subjects indicated until they shall have entered upon their proof and called their witnesses.

Ans. It is.

X Q. 2391. Do you know classes of brown cotton goods made by complainant which are stamped in addition to the name of the mill with the letters X X and X X X?

The same objection as last noted is repeated to this question, and the witness is instructed by counsel for complainant that, partially because this question does not relate in any manner to any subject-matter of his direct examination, it is optional with him whether or not to go into the matter inquired about, and he may decline so to do with perfect propriety.

Ans. I understand they make and stamp sheeting with those letters, but I am not familiar with them and could not tell at this moment the weights and grades of these goods. I have never either bought or sold the Lawrence Manufacturing Company's goods.

X Q. 2392. The letters X X and X X X do indicate, when stamped on Lawrence brown cotton goods, different grades or weights, do they not?

Ans. I think they do.

X Q. 2393. Do those letters, when alone on brown cotton goods, indicate that they were made by the Lawrence Mills?

Ans. No.

370 X Q. 2394. Then without the addition of the words "Lawrence Mills" there would be nothing to indicate who were the manufacturers?

Ans. No.

X Q. 2395. Do the letters L L alone on brown cottons indicate by whom the goods have been made?

The objection last noted is continued and the same instruction is given to the witness, and the question is further objected to as implying a state of facts contrary to the testimony of the witness on cross-examination.

Ans. To save time I will decline to answer.

X Q. 2396. Do the letters L L on brown cotton goods, unaccompanied by the words "Atlantic Mills" or "Lawrence Mills" or some other name, indicate by whom the goods have been made?

Same objection; same instruction.

Ans. Same answer.

X Q. 2397. Same question repeated.

Same objection; same instruction.

Ans. Same answer.

X Q. 2398. Were you ever in the retail trade in cotton goods?

Ans. I was not.

X Q. 2399. Do you know how long the Atlantic Mills have used the letters L L on brown cotton goods?

Ans. Of my own knowledge, since 1876.

X Q. 2400. Have you any information of those mills using those letters prior to 1876?

Ans. I have.

X Q. 2401. If so, what is that information and how long?

Ans. I have a letter in my pocket which gives those facts—since 1862.

Question and answer objected to as incompetent.

371 X Q. 2402. Have the Atlantic L L always been a 5-yard goods?

Ans. Not always, but nearly always.

X Q. 2403. How near did they ever come to being a 4-yard goods?

Ans. I don't know of my own knowledge that they ever used L L on anything but a 5-yard sheeting.

X Q. 2404. Have you any information that they used those letters on any other than a 5-yard goods? And, if so, please state it.

Objected to as incompetent.

Ans. I have information that they used it on a 4.56-yard goods in 1862.

X Q. 2405. In what places have you been engaged in the dry goods or cotton goods business?

Ans. In Boston and in New York.

X Q. 2406. Are those the only places.

Ans. Yes.

So far as this cross-examination has been objected to, redirect examination is declined for the reasons stated.

LOWELL LINCOLN.

The following telegram was offered on behalf of the complainant:

"BOSTON, MASS., *Aug.* 30, 1886.

"To J. H. Raymond, Murray Hill Hotel, New York:

"Replying to your inquiry about our L goods, our first sales of cottons stamped with single letter L was in June, 1866, and last sales on March 21st, 1867. Grade of these goods was exactly same as our double L goods. In other words, during first quarter of 1867 we substituted our present mark for the single letter L without any change in the goods themselves.

"(Signed) L. M. SARGENT."

372 It was stipulated that the above copy might be used in lieu of the original; that Mr. Sargent is the treasurer of the com-

plainant company, and that if examined he would testify as contained in said telegram, and, subject to the right to introduce additional testimony as to the subject-matter of said telegram and reserving the right to except to the subject-matter of said telegram for relevancy, the defendants waive the cross-examination of Mr. Sargent.

It was further stipulated that complainant may reserve the right to examine Mr. Cornelius N. Bliss, of New York, prior to October 1st, 1886, as a part of its testimony-in-chief, upon written interrogatories, the cross-interrogatories to be first submitted to complainant's counsel in Chicago, and to be strictly limited to the special subject-matter of the direct interrogatories; and if complainants elect so to examine Mr. Bliss and shall desire to do so upon receipt of said cross-interrogatories, then the interrogatories for complainant and defendant shall, without a formal *dedimus protestatum*, be forwarded to Clinton S. Harris, notary public, etc., by whom the said witness shall be so examined, the defendants reserving the right to except to any or any part of the questions and answers in the deposition of said C. N. Bliss for relevancy or competency.

Further, that defendants' time for taking testimony under previous stipulations shall begin Sept. 1st, 1886.

And thereupon and subject thereto complainant's testimony-in-chief was closed.

New York, 31st August, 1886.

J. H. RAYMOND,
For Complainant.
JAMES S. FRAZER,
Solicitor for Tennessee M'f'g Co. and Evansville Cotton Mills.
N. J. ALDRICH,
For Aurora Cotton Mills.

373 STATE OF NEW YORK, } *ss.*:
County of New York, }

I, Charles R. Clarke, a notary public in and for said county, in said State, do hereby certify—

That, beginning at eleven a. m. on the 30th day of August, 1886, by agreement of the parties as above noted, I took the depositions of the foregoing witnesses, Martin I. Cooley, Nathan Hobart, and Lowell Lincoln, having first duly sworn them, and reduced the same to writing in their presence, and that the same were signed by them, respectively, as and for their depositions in said causes.

I do further certify that the said counsel for the respective parties to said causes did, in my presence, waive all objections based upon the notices for and the time and place of taking said depositions, and did consent that the same should be taken before me with the same effect as if I had been appointed a special examiner in each of said causes.

I further certify that I am not of counsel or an attorney, or otherwise interested in the event of either of said causes.

In witness whereof I have hereunto set my hand this 31st day of August, A. D., 1886.

CHAS. R. CLARKE,
Notary Public in and for the County and State Aforesaid.

My fees, $18.80; paid by complainant.

CHAS. R. CLARKE.

Certificate of appointment of the notary attached.

CHICAGO, ILL., *Sept. 25th*, 1886.

We certify that the foregoing 373 pages of printed matter contain a true copy of the original depositions (except of the captions) taken in these causes, said originals being filed in the clerk's office of the United States circuit court, at Chicago, Illinois, in case of Lawrence Manufacturing Company *vs.* Aurora Cotton Mills.

(Signed) RAIMOND & RAINEY,
Sol's for Lawrence M'f'ng Co.

374 And the complainant also read the depositions of Ilestius S. Smith, Andrew Keck, and N. S. Byrom, taken by defendant on its behalf, but not read by it, as follows:

375–377 Er-ata red-inked in proper places.—C. C., cl'k.

378 Circuit Court of the United States, Northern District of Illinois. In Chancery.

LAWRENCE MANUFACTURING COMPANY
vs.
AURORA COTTON MILLS.

In pursuance to agreement of parties the deposition of Ilestius S. Smith is taken, on behalf of defendant, before P. H. T. Mason, notary public in and for the county of Cook, in the State of Illinois.

Complainant appears by its counsel, Mr. W. G. Rainey, and defendant by its counsel, Mr. A. J. Hopkins.

ILESTIUS S. SMITH, being first duly sworn, deposes and says:

Ques. 554. What is your name, residence, and occupation?

Ans. Illestius S. Smith; 3642 Prairie avenue, Chicago, Ilinois; occupation, dry goods.

Ques. 555. With what house, if any, are you associated in business?

Ans. J. V. Farwell & Co., of Chicago, Illinois.

379 Ques. 556. What business is J. V. Farwell & Co. engaged in, and how extensive is it?

Ans. The business of dry goods. It is one of the leading dry-goods houses in America.

Ques. 557. How long have you been in the employ of the firm?

Ans. Since September 12th, 1868.

Ques. 558. What position do you hold with the firm?

Ans. Assistant in the domestic department.

Ques. 559. In the department in which you are engaged for J. V. Farwell & Co. have you handled what is known as brown sheeting of different grades; and, if so, to what extent?

Ans. I will say this, that since the fall of 1869 I have been in the domestic department continuously. During my first year's service I had charge of the brown sheeting stock.

Ques. 560. Are you acquainted with what is known in the trade as Lawrence "double L" sheeting?

Ans. Yes, sir.

Ques. 561. Are you acquainted with any other "double L" sheeting that is handled in the trade? And, if so, go on and state what other "L L" sheetings you know in the trade.

Objected to by complainant's counsel as irrelevant and immaterial.

Ans. Yes; I am acquainted with other "L L" sheetings during the time I have been employed in the house. We have had, from time to time, various sheetings branded "L L," such as—I will say this, that there have been quite a number of brands of "L L's" of muslin. The following are simply a few of them: "Victoria L L," "Clarion L L," "Pacolet L L," "Atlantic L L," "Albany L L."

Ques. 562. Do you know in the trade an "L L" sheeting which is called the "Shawmut L L?"

Ans. Yes, sir; I do.

Ques. 563. What manufactory produces that sheeting?

380 Ans. The same company that manufactures the Lawrence "L L."

Ques. 564. What do the letters "L L" on the sheeting mentioned by you indicate in the trade?

Ans. As I understand it, simply a name to describe the sheeting.

Ques. 565. What do the letters "L L" describe when placed on sheetings in the trade?

Ans. To designate one brand of sheeting from another.

Ques. 566. Do they or do they not, standing alone, indicate the origin or ownership of the goods manufactured?

Ans. They do not.

Ques. 567. How are orders given and filled in the trade on "L L" sheetings?

Same objection by complainant's counsel.

Ans. I don't know that I get your meaning.

Ques. 568. Suppose an order for ten bales of "L L" sheetings should come to your house, what would you do?

Same objection by complainant's counsel.

Ans. Write the parties who sent the order, asking them what "double L" they wanted.

Ques. 569. Repeated to witness.

Same objection by complainant's counsel.

Ans. We should not fill the order unless it indicated the kind of sheeting wanted—giving the name.

Ques. 570. Please explain that fully, Mr. Smith.

Same objection by complainant.

Ans. Because we keep a number of brands of sheetings that are branded "L L," and there are others that sell almost as well as Lawrence "L L," viz., Atlantic "L L;" or they might want some of the other "double L's," so it would not be safe for us to guess at the "L L" they wanted.

Ques. 571. How long have you known the Atlantic "L L" sheeting in the trade?

Same objection.

Ans. I can't state the exact date, but some time in 1870.

381 Ques. 572. What is the fact as to whether or not the firm of Farwell & Co. were dealing in Atlantic "L L" when you first went with that firm in 1868?

Same objection.

Ans. I did not go into the domestic department until the fall of 1869, and I went into the brown sheeting stock at that time. I don't remember, in regard to Atlantic "L L," of knowing anything about them until 1870, as I stated before.

Ques. 573. You stated that the Lawrence "L L" and the Shawmut "L L" are manufactured by the same company. What is the difference, if any, between the Shawmut "L L" and the Lawrence "L L" sheeting? Explain fully.

Ans. Sometimes they state that they are seconds of Lawrence "L L's," and at other times that they are identically the same thing as the Lawrence "L L," both in weight and texture, claiming that they are in fact the Lawrence "L L," the only difference being they are branded Shawmut "L L."

Answer objected to as being hearsay.

Ques. 574. When you say "they" in the answer just given whom do you mean?

Ans. Lawrence Mills' authorized agents.

Ques. 575. Have you handled the Shawmut goods under the circumstances given in your answers to the two preceding questions?

Ans. Yes, sir; at various times.

Ques. 576. You mentioned in one of your preceding answers an "L L" sheeting known in the trade as "Albany L L." How long has the Albany "L L" been handled in the trade?

Same objection.

Ans. J. V. Farwell & Co. have been selling Albany "L L" six or seven years.

Ques. 577. Has the Lawrence Manufacturing Company ever fur-

nished the firm of J. V. Farwell & Co. Albany "L L's;" and, if so, to what extent?

Ans. They have branded the same goods in weight and
382 texture, claiming that they were the Lawrence "L L," in fact Albany "L L." I can't state to what extent, but they have done so.

Ques. 578. The Albany "L L" come in competition in the trade, do they not, with the Lawrence "L L," Beaver Dam "L L," Badger State "L L," Aurora "L L," and the "L L's" of other manufacturers?

Ans. They only come in competition, or did at that time, with Badger "L L's" and Aurora "L L's," and, I think, an "L L" that was made by a mill in Michigan, and more particularly come in competition in our house with Lawrence "L L," we invariably making the statement that they were the same as Lawrence "L L" in weight and texture.

The last clause of the answer objected to as incompetent and immaterial by complainant's counsel.

Cross-examination by Mr. W. G. RAINEY:

Ques. 579. When you hear "L L" mentioned what do you think of?

Ans. What "L L?"

Question repeated to witness.

Ans. We don't know what "L L" they mean—what "L L" they have reference to—because we have so many "L L's" in our stock.

Ques. 580. Do you think of silk or cotton goods when you hear "L L" mentioned?

Ans. If I was in the domestic department I would think of cotton goods.

Ques. 581. You are in the domestic department, and therefore you do think of cotton goods; is not that correct?

Ans. Yes; when "L L's" are mentioned.

Ques. 582. What manufacture do you think of when you hear "L L" mentioned, if any?

Ans. I would not think that it meant Lawrence "L L," any more than any other "L L" which we had in stock.

Ques. 583. Why did you mention in your last answer the word "Lawrence;" had I said anything about it?

383 Ans. No; you did not say anything about it. My explanation is that Walter Smith, of New York city, of the firm of Smith & Hogg, claimed that their "L L," meaning the Lawrence "L L," is the only "L L" that the general public knew anything about.

Ques. 584. Is it not a fact that in your trade since 1869 "L L" goods made by the Lawrence Manufacturing Co. have been the most prominent goods in the trade stamped with "L L?"

Ans. My remembrance is only from since 1870; from that time on for a number of years there were only two or three "L L's" that

we knew anything about, the Lawrence "L L" being at that time the most prominent.

Ques. 585. How long did it continue the most prominent "L L?"

Ans. Until other "L L's" came into the market.

Ques. 586. Until the other "L L's" you have referred to came into the market, when you heard "L L" mentioned didn't you think of the Lawrence goods?

Objected to as not proper cross-examination and as being irrelevant and immaterial.

Ans. At that time Lawrence goods were the most prominent.

Ques. 587. Question 32 (586) repeated to witness.

Objection also repeated.

Ans. Certainly.

Ques. 588. How long since the other "L L's" you have mentioned came into the market?

Ans. I can't state exactly.

Ques. 589. Give it as near as you can, Mr. Smith.

Ans. Since 1871; that is as near as I can get at it.

Ques. 590. The fire referred to was fifteen years ago. Will you now state that you knew any of the other "L L's" referred to except the Atlantic anywhere near fifteen years ago?

Ans. Since 1870 we have had Atlantic "L L's," and we have
384 had one or two other brands of cheaper grade of goods that were branded "L L," but I don't remember of any other "L L" being on the market previous to 1871; I don't mean previous, I mean since 1871.

Ques. 591. Is it not a fact that the Lawrence "L L" is still the most popular brand of such goods in the market, and a greater quantity of them are sold than any other "L L?"

Objected to as not proper cross-examination, irrelevant, and immaterial.

Ans. There are more Lawrence "L L" sold than any other one brand of "L L's," and in some sections of the country more of the Lawrence "L L's" are sold.

Ques. 592. What private brand has J. V. Farwell & Co., which they stamp on their "L L's?"

Objected to as not proper cross-examination, irrelevant, and immaterial.

Ans. Albany Mills "L L."

Ques. 593. Are you sure the word "mill" is on it?

Ans. Yes, sir.

Ques. 594. Is it not true that the Aurora Cotton Mills have branded their brown cottons, and furnished the same to your house, Albany "L L?"

Same objection by defendant.

Ans. It is.

Question repeated as to the Evansville Manufacturing Company.

Same objection by defendant.

Ans. To my own knowledge I can't state.

Ques. 595. What is your information or impression on that subject?

Same objection by defendant.

Ans. As to the Evansville Mill I can't say positively.

Ques. 596. Do you ever receive any orders simply for "L L" sheetings?

Ans. I don't remember now ever having seen an order simply calling for "L L's." They invariably mention the "L L" they want.

385 Ques. 597. Was that true before these other "L L's" you have mentioned came into the market?

Same objection by defendant.

Ans. Yes; I think it was. My impression is that they always order giving the brand.

Ques. 598. Is it not true that very often customers come to your store and speak to you about "L L" sheetings without referring to any particular make?

Same objection by defendant.

Ans. Yes; they do.

Ques. 599. When such inquiry is made what do you show such customer?

Same objection by defendant.

Ans. In that case I should ask them what "L L" they meant, unless we had been talking before in regard to some particular "L L."

Ques. 600. You would think of the Lawrence "L L" upon such an inquiry, would you not naturally?

Same objection by defendant.

Ans. No, I would not, because we have a big trade in Badger "L L's." It would depend largely what section the customer came from. If he came from Wisconsin I would naturally infer he wanted Badger "L L." If he came from Kansas he would probably ask for Lawrence "L L." If he was from Illinois he would probably ask for Aurora "L L."

Ques. 601. Then, if I understand the import of your answer, it is that if a customer from Wisconsin were to come into your store and ask for "L L's" you would understand him to mean a brown sheeting branded with Badger State; is that correct?

Ans. Either that or Beaver Dam "L L." That would be the natural inference, judging from my acquaintance and knowledge of the customers; but if you take a customer I did not know anything about, and I did not know what he had been in the habit of using, and he should call for "L L," I would ask him, as is my custom, what "L L" he desired.

Ques. 602. But if he came from Kansas and asked you
386 such a question, if I understand the previous answer of yours, you would suppose he referred to Lawrence goods; is that correct?

Ans. If I knew the customer to be from Kansas, and he would ask me the price of "L L's," I would give him the price on Lawrence "L L."

Ques. 603. Suppose he was from Missouri or Nebraska or Iowa?

Ans. If he was from Missouri I would infer that he wanted Lawrence "L L," as they are largely used there. If from Nebraska, Nebraska merchants use about as many of Badger, Pacolet "L L," Beaver Dam and Albany "L L" as Lawrence "L L;" about equally divided, I might say. Iowa the same as Nebraska.

Ques. 604. In the case of the two last instances you would think of the Lawrence goods, would you not, as well as the other "L L's?"

Ans. Yes; if a merchant came in from Nebraska or Iowa and asked for "L L" sheetings, I would ask him what "L L" he wanted or referred to, from the fact that they are not used so exclusively as in Kansas or Missouri.

Ques. 605. In such a case would you not think of brown sheetings branded "L L" and made by one of the mills you have mentioned?

Ans. Yes; certainly.

Ques. 606. That would be the case wherever the customer may be from, would it not?

Ans. Yes, sir; with the exceptions of Kansas and Missouri, where the Lawrence "L L" are sold largely, more than any other "L L" I have mentioned.

Ques. 607. Is it not true that during the last ten years, on an average covering the ten years, that there have been more brown sheetings branded with "L L" and made by the Lawrence Manufacturing Company than all the other "L L's" in the market put together that come in competition with them in the trade?

Same objection by defendant.

387 Ans. I have no data from which I can answer that question. Perhaps, take five first years of the ten that would be true, the last five years would not be true. I don't regard and we don't so understand the various "L L's" made are competitors of Lawrence "L L's." We have no "L L" in stock which we regard as the equal of Lawrence "L L." and customers so understand it, and in order to sell these other "L L's" besides the Lawrence we invariably make a difference in price.

Ques. 608. You have kept continuously the "L L" sheetings made by the Lawrence Company in your stock?

Ans. Not continuously; with intervals here and there that we were not able to buy them on account of terms, etc.

The foregoing question objected to by counsel for defendant.

Ques. 609. It has been your purpose to keep them in stock to

supply the demands of your trade when you could get them at a price to suit you?

Same objection by defendant.

Ans. It has been absolutely necessary, because there is nothing else made that would take their place.

Ques. 610. You have them in stock now?

Ans. Yes, sir.

Ques. 611. Is it not true that you have handled the "L L" sheeting made by the Lawrence Manufacturing Company during the past few years at a loss?

Objected to by defendant.

Ans. Occasionally; yes; as well as some of the other "L L's."

Ques. 612. How many bales per week do you have on an average of the "L L's" made by the Lawrence Company? State as near as you can.

Same objection by defendant.

Ans. I can only answer that recently we have only been able to get about twenty-five bales a week. I can't state the exact amount we use a week or month or year. I have no data without referring to my books.

388 Ques. 613. Have you not during some years sold as many as sixty bales a week?

Same objection by defendant.

Ans. Take at certain seasons of the year, say fall or spring trade, there are times we would sell as many as sixty bales a week.

Direct examination by Mr. A. J. HOPKINS:

Ques. 614. Is there any difference in the price of the Lawrence "L L" and the Shawmut "L L" in the trade; and, if so, which is the lower priced?

Ans. At times there is a difference, Shawmut being the cheaper; at other times we have to pay as much for the Shawmut "L L" as we do for Lawrence "L L."

Ques. 615. Is there any difference in the price between the Albany "L L" and the Lawrence "L L;" and, if so, which is the cheaper?

Question withdrawn.

Ques. 616. Is the putting of the letters "L L" on Aurora sheetings calculated to and do they in fact deceive the trade in mistaking the goods for the Lawrence goods?

Objected to as being a subject not brought out on cross-examination and as leading.

Ans. No, sir; no man can be deceived in regard to the two sheetings, as I have stated before, the Lawrence "L L" being the better goods.

Ques. 617. Is there any similarity in the brands of the Aurora "L L" goods and the Lawrence "L L" goods?

Same objection by complainant.

Ans. There is no similarity at all, except they both say "L L."

Ques. 618. Would a person of ordinary intelligence in the trade mistake the one brand for the other?

Same objection by complainant.

Ans. No, sir; it would not be possible.

Ques. 619. Mr. Smith, look at question and answer No. 35 (590), and see if that is what you refer to when you say you wish to make a correction?

389 Ans. Question 35 (590) is the one I had reference to. The question is this: "The fire referred to was fifteen years ago. Will you now state that you knew any of the other 'L L's' referred to except the Atlantic anywhere near fifteen years ago?"

Ans. "Since 1870 we have had Atlantic 'L L's' and we have had one or two other brands of cheaper grade of goods that were branded 'L L,' but don't remember of any other 'L L' being on the market previous to 1871." Now, I want to omit the correction I made, and the correction is: "I don't mean previous, I mean since 1871;" that is the error.

Recross-examination by Mr. W. G. RAINEY:

Ques. 620. Is it not true that you sometimes, when a customer wants "L L" sheetings, try to persuade him to take some of the other brands rather than the Lawrence?

Objected to as not being proper recross-examination, as immaterial and irrelevant.

Ans. Yes; when we are short of "L L's" and have not got enough to fill orders.

Ques. 621. Did you ever try to induce any of your customers to buy your private brand "L L" made by the Aurora Company in preference to the "L L's" made by the Lawrence Company?

Same objection by defendant.

Ans. No; never done anything of that kind. We wouldn't be able to succeed in anything of that kind, because there is too much difference, and because the Albany "L L" made by the Aurora Mills were so poor that we could not sell them instead of their own goods—the Aurora "L L's."

Ques. 622. Did you ever try to persuade any of your customers to take the Aurora "L L's" or any other "L L's" when you were out of Lawrence?

Same objection by defendant.

390 Ans. My answer to that is this: If a customer comes to me and asks me for Lawrence "L L's" and we were out of them we would call his attention to Badger "L L" as being the

nearest to Lawrence "L L;" also Beaver Dam "L L;" and if we were out of those brands would show him Aurora "L L," making the price less than Lawrence "L L" as an inducement.

Ques. 623. Is it not true that you have been enabled to put the Aurora, Badger State, Beaver Dam, and Albany goods onto the market the more readily because they were branded with "L L?"

Ans. No; these muslins—these different brands of "L L"—have to stand on their merit, and Lawrence "L L" could not be superseded with any other brand. We could not substitute anything else for Lawrence "L L."

Ques. 624. Is it not an advantage to these other goods to have "L L" branded on them?

Same objection by defendant.

Ans. No; they would sell equally as well with anything else on them. If you would call a customer's attention to Aurora "L L" he might have a curiosity to see what it was and examine it, but would invariably drop it and buy Lawrence "L L."

Ques. 625. Who orders the Albany "L L" branded by the Aurora Company for your house?

Same objection by defendant.

Ans. I can't say positively; it is either J. V. Farwell, Jr., J. K. Harmon, or E. J. Wiggin; they may all three of them consult together in regard to it.

Ques. 626. When you refer to "the trade" in your redirect examination you have reference to the jobbing trade, have you not?

Ans. I have reference to the trade generally connected with the jobbing of dry goods to country merchants.

Ques. 627. You have no reference to the consumer?

Ans. No, sir.

ILESTIUS S. SMITH.

391 The deposition of ANDREW KECK, produced, sworn, and examined, deposes as follows:

Q. 818. State your name, age, residence, and occupation, and how long you have been so engaged.

Ans. Andrew Keck; live at Evansville, Ind.; I am 38 years old; I am in the dry-goods business—member of the firm of Keck & Bacon, in the retail dry-goods business; have been in business about eighteen years.

392 Q. 819. State if, during that time, you handled brown sheeting.

Ans. Yes, sir.

Q. 820. State if ever you handled any brown sheeting of different grades and a grade upon which was stamped the letters L L to indicate the grade.

Ans. Yes, sir.

Q. 821. Please state what the letters L L, when stamped upon sheetings, mean or indicate to the person buying.

Objected to, as witness has not shown he has knowledge of such subject.

Ans. Indicates the weight or quality.

Q. 822. State if you know if there is a general custom among merchants and manufacturers as to the manner of indicating the various grades of merchandise. If so, please state what it is.

Objected to as incompetent and immaterial.

Ans. There is by letters thereon indicating their weight or quality. That is a very general custom.

Q. 823. To what extent does this custom prevail?

Objected to as incompetent and immaterial.

Ans. It is a pretty general custom.

Q. 824. Do the letters L L, when stamped upon sheetings, refer to or mean that said sheetings are the product of any one particular manufacturer?

Objected to as incompetent and immaterial.

Ans. I don't think so.

Cross-examination by W. G. RAINEY, attorney for complainant:

Q. 825. What do you understand a person to mean when he speaks to you of L L?

Ans. I understand him to mean the brand of goods or the make of certain grades.

Q. 826. You understand it to refer to sheetings, do you not?

Ans. Well, sheetings; there are different things have letters on them.

Q. 827. You understand it to refer to sheetings, do you not?

Ans. Yes, sir.

Q. 828. Do you not also understand that it refers to sheetings made by some particular manufacturer?

Ans. No; I think not.

Q. 829. What L L sheetings are you familiar with?

Ans. We have L L sheetings from here and the Lawrence L L sheetings.

393 Q. 830. How long have you known sheetings branded L L?

Ans. Since—I can't say exactly—probably ten years.

Q. 831. Have you known them longer than ten years?

Ans. I have not paid particular attention to them.

Q. 832. You have sold L L sheetings longer than ten years?

Ans. Yes, sir.

Q. 833. What L L's have you sold longer than ten years?

Ans. I don't know.

Q. 834. Were they not made by the Lawrence Manufacturing Co.?

Ans. Yes, sir.

Q. 835. They were known as Lawrence?

Ans. I think so.

Q. 836. If at that time anybody would have asked you for L L sheetings what would you have understood them to mean?

Ans. I would understand Lawrence Manufacturing Co.

Q. 837. How long has it been since you have known in the trade any other L L sheetings except those made by the Lawrence Manufacturing Co.?

Ans. Well, about three or four years.

Q. 838. Is it not true that up to the past three or four years should any one have asked you about L L sheetings you would have understood them to mean Lawrence goods?

Ans. Yes, sir.

Q. 839. Do you keep Lawrence L L sheetings now in your stock?

Ans. No, sir.

Q. 840. What do you keep?

Ans. We have the Argyle, the Henderson, Indian Head, and several other brands.

Q. 841. Are these several brands of sheetings stamped with L L?

Ans. No, sir; we don't handle any now; we haven't handled any for some time.

Q. 842. What trade are you familiar with?

Ans. Retail trade only, at Evansville.

Q. 843. Do you buy for your house?

Ans. Yes, sir; I mostly do the buying.

Q. 844. Is it not true that should any person ask you now for L L's that you would think of Lawrence goods?

Ans. No; I would ask them what brand they meant.

Q. 845. You would not think that they meant Lawrence goods?

Ans. I don't know that I would here, because we have it here and have it quoted.

Q. 846. Why would you ask them what brand they meant?

Ans. I would think of Lawrence and of these mills.

394 Q. 847. You would think of Lawrence?

GIVENS: In connection with others.

Counsel objects.

Ans. Yes, sir.

Redirect examination by GIVENS:

Q. 848. In the cross-examination the phrase "L L" sheetings has been repeatedly used. Is there any L L sheetings or other similar brands of sheetings made by different mills and the quality indicated by stamp L L? Please explain your understanding of this.

Objected to as incompetent, irrelevant, immaterial, and as leading.

Ans. Yes, sir; there are different makes; the meaning of L L would indicate quality.

GIVENS: You don't understand my question.

Ans. Yes, sir.

Q. 849. Do you mean that there is a distinct class of sheetings known as L L sheetings?

Objected to as leading.

Ans. Yes, sir.

Q. 850. State if you have ever seen the letters L L alone upon sheetings.

Objected to as not proper redirect examination.

Ans. I don't know that I can say that.

GIVENS: Without anything else?

Ans. Without anything else.

Recross-examination:

Q. 851. What quality of goods do you understand to be meant when L L sheetings are spoken of?

Ans. A certain weight goods.

Q. 852. Made by what manufacturer?

Ans. I don't know that I would have reference to any particular one.

Q. 853. Would you understand it to mean goods made by the Lawrence Manufacturing Co.?

Ans. Well, I once would have thought so, but since they make other L L's it might apply to them.

Q. 854. You would have thought it meant Lawrence goods up to the last three or four years, would you not?

Ans. I don't know whether I would or not.

Q. 855. Have you already sworn that you knew goods made by the Lawrence Manufacturing Co.?

Ans. Yes, sir.

Q. 856. Isn't it a fact that you didn't know anything about Lawrence goods and had not sold Lawrence L L's—that is, up to within the last three or four years; is that true?

395 & 396 Ans. Yes, sir.

GIVENS: State whether or not there may not have been at that time other sheetings stamped L L to which such an inquiry might have applied as well as to Lawrence.

Ans. There may have been.

ANDREW KECK.

Subscribed and sworn to before me this 11th day of December, A. D. 1886.

WILL. W. READ,
Notary Public.

397 INDIANAPOLIS, IND., *Dec.* 15, 1886.

Adjourned from St. Louis, Missouri, and taking the depositions resumed.

N. S. BYRAM, being produced, sworn, and examined, deposes as follows:

Q. 941. State your name, age, residence, and occupation, and how long so engaged.

Norman S. Byram; 55 years; Indianapolis, Indiana; wholesale dry-goods merchant; twenty-one years; ten years previous I was a retail merchant in dry goods.

Q. 942. In what territory does your business extend and a member of what firm are you?

Ans. Indiana and Illinois; a member of the firm of Byram, Cornelius & Co.

Q. 943. State if during your experience as a dry-goods merchant you have handled brown sheetings and become familiar with the manner in which they are stamped. If yes, state the manner brown sheetings are stamped to indicate to the trade the difference in manufacturers and difference in grades.

Objected to as incompetent and immaterial.

Ans. Yes; they are usually stamped with the name of the mill or corporations. Quality is designated, if more than one quality is made at the same mills, most usually by letters of the alphabet; sometimes by figures.

Q. 944. State whether or not you have handled brown
398 sheetings made by different mills upon which was stamped, in connection with other words, the letters L L. If so, state the meaning attached to them as understood in the trade.

Same objection, and also because it has not been shown the witness is familiar with such meaning in the trade.

Ans. I have. The understanding of the trade is goods four yards of which will weigh a pound.

Q. 945. State whether or not said letters when so used upon sheeting have any reference to any particular manufacture.

Ans. No, sir.

Q. 946. State whether or not you have ever handled or known in the trade Atlantic L L sheeting; and, if so, state for how long.

Objected to as incompetent and immaterial.

Ans. I have; from twenty to twenty-five years.

Q. 947. Please state the custom of the trade, in ordering sheetings, as to using both name and letter.

Same objection.

Ans. My custom—I don't know what other people's custom is—in ordering goods to designate the quality wanted, to use both the name and the letters usually branded on them.

Q. 948. State whether or not it is a general custom among merchants and manufacturers to indicate the grade or qualities of nearly all merchandise by letters or numbers; and, if yes, give some instances.

Same objection; and, further, because the witness has not qualified himself on this point.

Ans. In a great many kinds of cotton piece goods it is, and also

in some kinds of dress goods. In the cotton piece goods there are sheetings or brown muslin, canton flannels, and ticking. The goods made by Amoskeag Mills, by Peperill Mills, Nashua Mills, and a great many Southern cotton mills, and by numbers of printers of calico. The qualities are designated by letters of the alphabet.

Cross-examination by W. G. RAINEY:

Q. 949. Do you know of any trade-marks used on cotton goods? If so, mention such as you can now recall.

Ans. I do not think I do, or at least I cannot recall any at this moment.

Q. 950. Do you know what a trade-mark is?

Ans. Well, I think I do. A trade-mark is a designation or device or name that is registered in the Patent Office on certain kinds of goods or to designate certain kinds of goods.

Q. 951. According to this knowledge of yours can you not
399 recall any device or name that is used on goods which, when suggested in your hearing, would call to your mind any specific goods?

Ans. I cannot; no, sir.

Q. 952. Did you ever handle or know in the trade goods on which were stamped the words "Fruit of the Loom?"

Ans. Not on the goods; no, sir. The "Fruit of the Loom" is stamped on a ticket that is put on the goods, or rather printed on the ticket.

Q. 953. When you see or hear such words mentioned what idea comes to your mind?

Objected to.

Ans. A bleached muslin manufactured by Mr. Knight somewhere in Connecticut or Rhode Island.

Q. 953½. Do you not understand that these words "Fruit of the Loom", when so used on muslin, to be the trade-mark of Mr. Knight?

Objected to.

Ans. I do not; it means one quality of bleached muslin that Mr. Knight manufactures.

Q. 954. Are there any other words or letters which are familiar to you that have been used on muslins, which indicate to your mind by whom or what manufacturer such goods are made? If so, please state them.

Ans. Yes; there is the Atlantic Mills, Amoskeag A, Amoskeag B, Amoskeag A C A, Great Falls J, Great Falls E, Nashua A, Nashua A A, Nashua A A A, Nashua X, Nashua X X, Nashua X X X, Nashua F F, Nashua G G, Omega A, Omega A C A, Peperill R, O, and E, Granite Mill E E, Granite Mill L L. That is about all I think of just now.

Q. 955. Should one come to your store and ask you for L L goods or should send you an order for L L goods, so many pieces of L L's, with what would you fill such an order?

Objected to.

Ans. Wabash L L.

Q. 956. In your previous answer, wherein you enumerated certain goods with certain letters thereon, you stated that you had given all that you could think of just then. In that answer you mentioned Granite Mill L L. Please state what brought to your mind so soon Wabash L L's.

Ans. The previous question asked me.

Q. 957. Do you keep Wabash or Granite L L's in your stock, or both?

Ans. I keep Wabash L L and not Granite L L, at the present, at least.

400 Q. 958. By whom are the Wabash L L made?

Ans. The goods that we are keeping at the present time are manufactured by the Evansville Cotton Manufacturing Co.

Q. 959. Wabash is your private brand for such goods, is it not?

Ans. Yes, sir.

Q. 960. And the defendant company stamps the same on your goods, together with L L, at your request?

Objected to.

Ans. Yes, sir.

Q. 961. Why do you have such goods so stamped with L L?

Ans. To designate the quality of them.

Q. 962. Why do you not have some other words put upon the goods to designate the quality?

Ans. I do for other qualities.

Q. 963. Why do you have the goods which you order stamped with L L not stamped with some other letters to designate such quality, or, in other words, why did you select L L?

Objected to.

Ans. Goods stamped with L L are generally known to the trade as four-yard goods, which is the weight of these goods that we have so stamped.

Q. 964. Then, one reason that induced you to have L L stamped on these goods was in order to indicate to the trade that they were of four yards to the pound?

Objected to.

Ans. Yes, sir.

Q. 965. Would not some other words or letters of common use in the trade have carried to the trade the same significance—that is, that they were four yards to the pound?

Objected to.

Ans. No, sir; not unless they had been educated that way.

Q. 966. Suppose you had had stamped on the same the words "four yards to the pound," would not they have answered?

Objected to.

Ans. I expect they would have answered the same purpose.

Q. 967. Do you not know in the trade a four-yard muslin as Atlantic P?

Objected to.

Ans. I know an Atlantic P, but whether it weighs four yards or not I do not know. I do not know it as such.

Q. 968. Do you know of any four-yard muslin, and how the same is stamped, except those stamped with L L? If so, please mention such as you can recall?

401 Objected to.

Ans. There is a Peperill R that I believe is a four-yard goods; there are a great many others if I can think of their names.

Q. 969. Why did you not select one of these other designating marks or letters?

Objected to.

Ans. For the reason that the qualities of all four-yard goods are not the same, and L L not only designates the weight, but quality of the fabric, as to fineness and size of the threads of which it is composed, together with what is known to the trade as the count or number of threads to the square inch.

Q. 970. Do you know what that count is?

Objected to.

Ans. I do not.

Q. 971. But whatever it is your L L is of that count?

Objected to.

Ans. Yes, sir.

Q. 972. Now, Mr. Byram, have you given us all the reason you know why you ordered such goods so branded for you?

Objected to.

Ans. Well, there is probably one other reason and that is, that I can probably make more money out of them under my private brand than under anybody else's brand.

Q. 973. Is it not true that the trade had been educated up to a knowledge that L L meant four-yard goods of a certain quality and pick?

Objected to.

Ans. Well, I think that is likely. I would say yes.

Q. 974. And such quality and pick is also well known to be different from other four-yard goods in the market?

Objected to.

Ans. Yes.

Q. 975. How long, to your knowledge, had such goods this reputation in the market?

Objected to.

Ans. I would say twelve or fifteen years.

Q. 976. What particular manufacture, if any, of L L sheetings built up this reputation in the trade twelve or fifteen years ago?

Objected to.

Ans. Well, I suppose the Lawrence Manufacturing Co.; at least they were the first that made a specialty of it that I know of.

Q. 977. At that time, when you heard L L's mentioned,
402 you understood that it referred to goods made by the Lawrence Manufacturing Co., did you not?

Objected to.

Ans. Not always.

Q. 978. It did sometimes?

Objected to.

Ans. Possibly; I would think so.

Q. 979. Do you handle the L L sheetings made by the Lawrence Manufacturing Co.?

Objected to.

Ans. I do.

Q. 980. Is it a benefit to you or your trade to have L L branded on your sheetings?

Objected to.

Ans. Well, I think it is.

Q. 981. Do you ever push your Wabash L L's in preference to the Lawrence L L's?

Objected to.

Ans. Yes, sir.

Q. 982. Do you ever keep concealed on or keep off your tables Lawrence L L's and keep exposed to view your Wabash L L's?

Objected to.

Ans. Yes, sir.

Q. 983. Is it not true that you have customers who much prefer Lawrence L L's to your Wabash L L's?

Objected to.

Ans. We have some customers that prefer Lawrence L L's and others who will pay us more for the Wabash L L's than for Lawrence L L's and buy them in the same bill.

Q. 984. Should a new customer order from you L L sheetings would you not suppose that he meant or wanted the Lawrence goods?

Objected to.

Ans. Not if he did not mention Lawrence in his order.

Q. 985. There was a time before you dealt in other four-yard

goods branded with L L that should a customer order from you L L sheetings you would have understood it to have referred to Lawrence L L's, would you not?

Objected to.

Ans. I don't think there is, sir, for the reason that I have sold goods manufactured by the Lawrence Manufacturing Co. and bought from their agents goods stamped with L L and branded different from Lawrence Mills; they were branded Shawmut L L.

403 Q. 986. At the time before you handled or knew other four-yard goods stamped with L L except those made by the Lawrence Manufacturing Co., including the Shawmut, should you have received an order for L L sheeting, could it have referred to the make of any other mill which made a four-yard goods and branded with L L except to the Lawrence Manufacturing Co., as far as your knowledge went?

Objected to.

Mr. Givens asks to have question reread.

Ans. I can't say; it has been so long, and I don't recollect whether I handled such goods before that time.

Q. 987. Before what time?

Objected to.

Ans. Previous to handling Lawrence L L's or Shawmut L L's.

Q. 988. Is there anything stamped on your L L sheetings besides the word Wabash; and, if so, what is it?

Objected to.

Ans. I can't answer that question, as we put heavy on some grades, but I think not.

Q. 989. Now, will you state here that you did not have such sheetings branded L L for the one reason, among others, to put them into competition with the L L's made by the Lawrence Manufacting Co.?

Objected to.

Ans. I did not, because I ask more money for Wabash L L than for Lawrence Mills L L.

Q. 990. Did you not have L L put on your goods in order to obtain a benefit therefrom on account of the popularity of L L sheetings which had been built up by the Lawrence Manufacturing Co.?

Objected to.

Ans. I can't say that I did particularly. I had it put on because there was so many other brands of L L's in the market and because I wanted a private brand of my own.

Q. 991. And because you wanted to get with other L L's whatever benefit there was in the trade coming to such goods by reason of the fact they were stamped with L L. Is that correct?

Objected to.

Ans. Yes, sir.

Redirect:

Q. 992. State whether or not you use your private brand Wabash on other grades of sheeting besides the four-yard goods?

Objected to as incompetent and immaterial.

Ans. Yes, sir.

404 Q. 993. State on what grades.

Same objection.

Ans. Four other grades, A, B, C, and D.

Q. 994. In answer to one of the cross-questions you are made to say that you concealed the Lawrence L L's from customers' view. Please explain what you mean by that answer.

Same objection.

Ans. I don't mean that I conceal them, but I don't keep them in the same line with other sheetings or together with the other sheetings, but in another part of my store, and do not make them as prominent as I do the other goods of the same line or character.

Recross:

Q. 995. Is it not true that the defendant Co. manufactures for you the other four grades of sheeting on which is stamped Wabash and the letters A, B, C, and D? And, if so, give the weights of these respective grades.

Ans. They do, and they grade, respectively, 2.85 yards, 3 yards, 3.50 yards, and five yards to the pound.

NORMAN S. BYRAM.

Subscribed and sworn to before me this 15th day of December, 1886.

ORLANDO KNOWLTON,
Notary Public.

No other witness present; adjourned to 9.30 a. m., December 16, 1886.

404½ And the complainant read and referred to a book of which this is the title page, to wit:

"Vol. XIX. No. —(number torn off.—Cl'k). Sheldon's Weekly Dry-Goods Price List, published by J. D. Sheldon & Co., No. 115 Worth street, New York. Wednesday, September 22, 1886. Terms (with Buyers' Reference Book), $5 per annum. Single copies, 25 cents."

And of said book the following, page 28, displayed advertisement of the Lawrence Manufacturing Company was read by complainant, to wit:

"Townsend & Yale,
Agents,
[Vignette, Bull's Head.]
Lawrence Manufacturing Company.

L L, X X, & X X X
Brown Cottons,
Canton Flannels,
Denims & Tickings,
Staple & Fancy Hosiery and Underwear.
345 & 347 Broadway, New York;
17 Kingston St., Boston;
230 & 232 Chestnut St., Philadelphia;
160 & 162 Market St., Chicago."

405 The defendant then read the following depositions, contained in, from this page 405 to page 660 inclusive, beginning with Jonathan C. Bowker and concluding with Alonzo George, page 660, vol. 3 of this transcript, as follows:

United States Circuit Court, Northern Dist. of Illinois.

LAWRENCE MANUFACTURING COMPANY
vs.
AURORA COTTON MILLS.

United States Circuit Court, Western Dist. of Wisconsin.

SAME *vs.* BEAVER DAM COTTON MILLS.

United States Circuit Court, Dist. of Indiana.

SAME *vs.* EVANSVILLE COTTON MANUFACTURING COMPANY.

United States Circuit Court, Middle Dist. of Tennessee.

SAME *vs.* TENNESSEE MANUFACTURING COMPANY.

The deposition of Jonathan C. Bowker, of Lawrence, in the State of Massachusetts, taken by consent at the office of the Atlantic Cotton Mills, at Lawrence, Massachusetts, May 22nd, A. D. 1886, in the presence of W. G. Rainey, counsel for complainant, and D. C. Givensand J. M. Dickinson, representing all of said defendants, all formalities as to notice, caption, and certificate waived.

It is agreed that all exceptions except those above waived may be taken at the trial to any question and answer the same as if noticed at the time of writing them.

It is agreed that this original may be handed by the notary taking it to one of the counsel of defendants, and that the same may be filed in either of said suits, and a copy certified as correct by said attorney may be filed in each of the other cases, with the right reserved to complainant of using the original at any stage in either of said cases.

This deposition was taken on behalf of the defendants in said suits.

Said witness, being duly sworn, deposes as follows:

Q. 1. Give your age, residence, and occupation.

Ans. My age is very near sixty-eight years. I reside in Lawrence, Massachusetts, and my occupation is book-keeper and paymaster of the Atlantic Cotton Mills.

406 Q. 2. How long have you been engaged in the capacity of book-keeper for said mills?

Ans. A little over thirty years.

Q. 3. Have you not, during said period, kept records of the production of cotton goods by said mills, showing the weights of and the marks upon such goods respectively?

Ans. I have.

Q. 4. Please state whether or not the Atlantic Cotton Mills manufactured a cotton sheeting at the present time stamped with the capital letters L L, and, if your answer be yes, will you please file a sample of said sheeting with the label used by said mills upon it, and make it Exhibit "A?"

Ans. Yes; and I do file such exhibit with the label upon it.

Q. 5. Please state for what length of time the Atlantic Cotton Mills have been manufacturing and selling to the trade sheetings thus stamped, and give the weight of the goods for the period or periods during which said stamp has been used upon it.

Ans. Since 1862; there have been interregnums, but I cannot give you the time when these goods were not made. The weight yards per pound, as we call it, of the first made averages four $\frac{30}{100}$ yards to the pound. About a year after the first were made it was changed to four $\frac{56}{100}$ yards per pound. Later on, if you wish the date, I will go to the record. (Witness refers to a book.) In 1872 the weight of the goods was changed to five yards to the pound. In 1862, I have already given, it was four $\frac{56}{100}$ yards per pound. Then, as I have said, it was not continuous.

Q. 6. Please explain the extent and cause of such interregnums mentioned by you.

Ans. I am unable to explain the cause. I have nothing to do with the contract of selling the goods. There were no L L goods made, what we call the double L goods, in the year ending May 8th, 1863, nor in the six months ending November, 1863. We commenced making them again in the summer of 1864, and continued for one year; then there was another interregnum from June, 1865, to January, 1872. I have not given the exact date of the month. They have been made continuously since that time.

Q. 7. Were the L L's stamped on the goods of the grades named throughout said times when said grades were manufactured by you?

Ans. They were.

Q. 8. Who kept the records to which you have been referring?

Ans. I did.

Q. 9. Were or not these goods manufactured from 1862 to the

present time, as the trade demanded them, and as they could be disposed of by you?

Ans. I am not able to answer that question.

407 Cross-examination by Mr. RAINEY for the complainant:

Q. 10. Could you from memory give the dates and other data you have just given as to the manufacture of L L goods by the Atlantic Cotton Mills?

Ans. I could not.

Q. 11. Then you have no knowledge of these facts except from your books; is that correct?

Ans. No, sir; it is not correct.

Q. 12. How many yards of sheeting did the Atlantic Cotton Mills stamp with double L in 1862?

Ans. I cannot answer that question now. I have not the books here.

Q. 13. From the first book you examined cannot you answer the question?

Ans. Nothing on this book to show the amount of product of double L in that year.

Q. 14. This book now before you does show the total number of yards manufactured by your mill for the year ending May 10th, 1862? If so, give the total number of yards.

Ans. It does not show the number of yards. It shows the number of pounds.

Q. 15. Did the Atlantic Cotton Mills stamp any great number of yards of its goods with double L in 1862?

Ans. I am unable to answer that question without further records, but I would say it is a comparatively small amount.

Q. 16. Does not this book show the exact number of yards per pound of sheeting stamped by your mills with double L in the six months ending May 10th, 1862? If so, state what the book shows.

Ans. The book shows an average yards per pound for the six months ending May 10th, 1862, to be four yards and $\frac{568}{1000}$ of a yard per pound.

Q. 17. Did your mill stamp any of its goods with double L from May 10th, 1862, up to May 14th, 1864?

Ans. No.

Q. 18. What weight does this book show such L L's to have been May 14th, 1864?

Ans. The average weight is four yards and $\frac{749}{1000}$ yards per pound.

Q. 19. Then, if I understand you, your mills stamped your goods with double L for about a year thereafter up to some time in 1865?

Ans. They did.

Q. 20. What were the number of yards per pound of these goods?

Ans. For the six months ending June 10th, 1865, the L L's averaged four yards — $\frac{7873}{10000}$ yards per pound.

408 Q. 21. Please give what other grades of sheetings your mill made from 1862 up to 1868; and how were they branded?

Ans. They are branded A. C. G. D. H. M. P. V. E. L. Q. S S. X X. T. X. N. R. F. Z Z. N N. K. W. I. S.

Q. 22. Were any of these brands on what was known and called four-yard goods; if so, which?

Ans. F. K. E. P. These are all.

Q. 23. Is it not a fact that the price of cotton sheetings is controlled in the market by the number of yards to the pound and count of texture?

Ans. I think it is.

Q. 24. Do not these several letters and combinations of letters you have given above, with which you have stamped your sheetings, each indicate a different class of sheetings, of different texture or count, and different number of yards to the pound, and so known by such letters to the trade, and as made by the Atlantic Cotton Mills?

Ans. The letters indicate different styles, partly in count, partly in number of yards, partly in width of goods, and partly in slaie. I do not know how they are known in the trade. Part of these goods were drills and not all sheetings.

Q. 25. Where are the Atlantic Cotton Mills situated?

Ans. The Atlantic Cotton Mills are situated in the city of Lawrence, Massachusetts.

Q. 26. There are other cotton mills in Lawrence, Mass.?

Ans. There are other cotton mills here.

Redirect:

Q. 27. The figures and letters given in your cross-examination were taken from the same book by you to which you referred in giving dates of the manufacture of L L goods in your direct examination, were they not?

Ans. They were.

Q. 28. Now, independent of that book, do you or not remember, without giving the exact dates, that the Atlantic Cotton Mills manufactured and sold in the trade as early as prior to 1865 sheetings stamped with the capital letters L L?

Ans. No.

Q. 29. Do you, after refreshing your memory by reference to the entries made by you in said book, now remember that they made and sold such sheetings prior to that time?

Ans. No; I do not remember that letter distinctive from any other letter.

Q. 30. Were or not the records made by you correct at the time they were made, and do they show change or alteration?

Ans. They were believed to be correct at the time, and no alteration has ever been made.

409 Recross:

Q. 31. The entries on that book were made by you from information derived by you from other sources than your own knowledge, were they not?

Ans. They were.

Redirect:

Q. 32. Did you or not see, during the period of 1862, sheeting in the Atlantic Cotton Mills, in their store-room or about their warehouse, made by them, stamped double L?

Ans. I have no remembrance of any particular piece or pieces.

Q. 33. Is not that book a complete record, kept by you, of the brands and other entries relating thereto, of the sheetings made by the Atlantic Cotton Mills, and is it not recognized and preserved as such by said mills?

Ans. No; it is not a complete record of goods manufactured, as I understand the question. It is only a record of the cost per pound of the goods, of all labor, stock, repairs, general expenses, and interest that go to make up the cost of the manufactured goods. It also contains the cost per yard, also contains the yards per pound, of each grade of goods or mark of goods made by the Atlantic Cotton Mills.

Q. 34. It contains the letters stamped on said goods and the dates during which they were made under said stamps?

Ans. It does.

Q. 35. Is it kept as an authentic record by the mills of the facts just mentioned by you as contained therein?

Ans. It is.

(Signed) JONATHAN C. BOWKER.

Subscribed and sworn to by the said Jonathan C. Bowker this 22nd day of May, A. D. 1886.

(Signed) ARETAS R. SANBORN,
Notary Public.

SATURDAY, *May 22nd*, 1886.

By consent, hearing continued to May 24th, at 10 o'clock a. m.

COMMONWEALTH OF MASSACHUSETTS, *ss:*

MAY 24TH—at 10 o'clock.

This is to certify that Jonathan C. Bowker, the above-named deponent, appeared before me, at three (3) o'clock p. m., on the 22nd day of May, A. D. 1886, at the office of the Atlantic Cotton Mills, in the city of Lawrence, State of Massachusetts, and gave the foregoing deposition to be used in an action of — now pending between
410 Lawrence Manufacturing Company and Aurora Cotton Mills, Evansville Cotton Manufacturing Co., Tennessee Manufacturing Co., Beaver Dam Cotton Mills, before the United States circuit court for the respective districts shown in the caption; that prior to his examination the said deponent was duly sworn by me to testify the truth, the whole truth, and nothing but the truth relating to the cause for which said deposition is taken; that both parties to the said action had an opportunity to examine the said deponent as in the statute provided; that the said deposition was reduced to writing by me; that it was carefully read to the said deponent, and was then

subscribed by him; that the said deposition was taken at the request of the defendants in said action, and said deponent being —; and that the complainant, by W. G. Rainey, counsel in said action, attended at the taking of said deposition, and all formalities as to notice, caption, and certificate having been waived by all parties.

Dated at Lawrence, this 22nd day of May, A. D. 1886.

[SEAL.] ARETAS R. SANBORN,
Notary Public.

MAY 24TH—at 10 o'clock a. m.

Hearing resumed, pursuant to adjournment.

JONATHAN C. BOWKER, being recalled, testified as follows:

Q. 36. In your examination of the 22nd inst. you state that since 1862, with interregnums, the Atlantic Cotton Mills have manufactured brown sheetings stamped L L. Now state whether or not the same record used by us in your former examination shows the manufacture of goods stamped L L by said mills at any time prior to 1862; and, if so, state the period and the weight of the goods as shown by said record.

Ans. Goods were made and stamped L L in the early part of 1860. The weight of the goods made at that time was four yards and $\frac{198}{1000}$ yards to the pound.

Q. 37. Were you or not at the same time, as shown by said record, making a brown sheeting stamped single L? And, if so, give the weight of those goods.

Ans. We made (goods) brown sheetings stamped single L in six months ending May, 1860, the same period in which we made the double L (L L) brown sheeting. The weight of the L sheetings averaged three yards and $\frac{892}{1000}$ yards to the pound.

Cross-examination:

Q. 38. The information you have in your answer to the two preceding questions is not given from your own knowledge, is it?

Ans. I know they were made. I have no remembrance of any distinctive L or L L. My knowledge of their being made is
411 the record I made of them at the time, and that record has never been questioned.

Q. 39. That record was made by you from data given you by others, was it not?

Ans. It was.

Q. 40. Did the Atlantic Cotton Mills stamp any sheetings from May, 1860, to May, 1862, with L L?

Ans. None.

Q. 41. Those stamped in May, 1860, with L L were of comparatively a small amount—very small. Is that correct?

Ans. I shall refer to my books before I answer. I will get the books if you want them.

Q. 42. What is your best impression as to the amount, independent of the books?

Ans. I can give no impression as to whether it was a 100,000 yards or 200,000 yards, and it may have been 500,000.

Re-examined:

Q. 43. Your answers to the questions propounded to you in cross-examination were based upon the same record referred to by you in answering question in the direct examination?

Ans. They were.

Q. 44. In answering the question, Did the Atlantic Cotton Mills stamp any sheetings from May, 1860, to May, 1862, with L L, you answered by referring to the record, did you not?

Ans. I did.

Q. 45. You were not speaking from your memory independent of the record?

Ans. I was not.

(Signed) J. C. BOWKER.

Subscribed and sworn before me by the said Jonathan C. Bowker.

(Signed) ARETAS R. SANBORN,
Notary Public.

Also depositions of Edward Defresne and Lowell Carver, taken at the same place, for the same purpose, and under the stipulations mentioned in the caption, and pursuant to order of adjournment made on the 22nd day of May, inst., to May the 24th, 1886.

EDWARD DEFRESNE, being duly sworn, deposes as follows:

Q. 46. Please give your age, residence, occupation, and how long you have been engaged in such occupation.

Ans. I will be fifty years old Dec. 27th, 1886; I reside at Lawrence, Massachusetts; am a second hand in the cloth-room in the Atlantic Cotton Mills, and have been engaged in said room ever since 1855, except from August, 1862, to August, 1863; I was in the war.

412 Q. 47. Please state whether or not, during the year 1862, before you went to the army, you saw in the mills of the Atlantic Co. brown sheetings? And, if so, give me some of the stamps or marks used upon said sheetings by said mills during said part of 1862.

Ans. I saw brown sheetings stamped "Atlantic Mill R," "Atlantic Mill L L, Fine Sheetings," "Atlantic Mill L, Fine Sheetings," "Atlantic Mill O, Fine Sheetings," "Atlantic Mill N, Fine Shirtings," "Atlantic Mill S, Fine Shirting," "Atlantic Mill E, Fine Shirting." I don't remember anything else. Yes, I do—"Atlantic Mill Drilling;" all previous to 1862. In 1862 the mill was running slow on account of the war. I saw sheetings stamped L L in 1862 in the cloth-room in said mill.

Q. 48. Did you or not, in 1862, handle or bale or work with, in the cloth-room of said Co., sheetings stamped "Atlantic Mills L" and "Atlantic Mills L L?"

Ans. I have.

Q. 49. With whom have you talked about the sheetings you have above mentioned, and when did you have such conversation?

Ans. With Mr. Bowker, Saturday afternoon.

Q. 50. What did he say to you?

Ans. He wanted me to get "a head-end" L L; I did so.

Q. 51. Is that all he said?

Ans. He wanted me to get a book at the time we were manufacturing L L.

Q. 52. Go on and state everything Mr. Bowker said to you on Saturday about the sheetings referred to.

Ans. I can't remember everything that was said; I was pretty busy at the time. There was some remark made about L L. I said I thought I could find the old stamp which was used at the time.

Q. 53. Have you had any conversation with any one except Mr. Bowker about what you would testify to in this matter; if so, with whom?

Ans. With the gentleman (witness pointing to Mr. Dickinson). I don't know his name.

Q. 54. Did either Mr. Dickinson or Mr. Bowker ask you whether the Atlantic Mills stamped sheetings with L L in 1862?

Ans. They did.

Q. 55. Did you at the time recall to your mind the facts you have above testified to, or have you had your memory refreshed in any way?

Ans. I remember the time very well.

Q. 56. Did you not examine some of the books of the Atlantic Mills in order to fix the date in your mind?

Ans. No, sir; I had to examine the date of the book to find the book that was wanted.

413 Q. 57. Did you not look into the book you were searching for and did find to ascertain whether the book did cover the date mentioned to you by Mr. Bowker?

Ans. I looked to see when L L was manufactured. I found it was manufactured on 4th of Feb., 1860. I didn't look any further into the book.

Q. 58. Did not Mr. Bowker or some one else ask you before you were sworn in this case about L L's in 1860?

Ans. I do not remember.

Q. 59. Do you remember about everything that transpired in 1860 and 1862?

Ans. No, sir.

Q. 60. Can you now recall all the goods with their brands that were packed or handled in the cloth-room of the Atlantic Mills as far back as the year 1862?

Ans. No, sir; I do not remember. I remember some part of the goods. I don't remember all of them.

Q. 61. Is it not possible that you are mistaken in giving the different brands or marks on sheetings made by the Atlantic Mills in 1862?

Ans. No, sir; not any mistake on the above brands that I mentioned.

Q. 62. This you are very positive about, are you?

Ans. Very positive about the brands I mentioned before. There may be some I don't remember.

Q. 63. Should the books of the Atlantic Mills omit to show that this mill branded some of its sheetings with L, others with O, others with E, would you still insist in swearing that sheetings were so branded in 1862, before you went into the army?

Ans. I believe I should.

Redirect:

Q. 64. The book you referred to was the book that Mr. Bowker called for on Saturday, was it?

Ans. Yes, sir.

(Signed) EDWARD DUFRESNE.

Subscribed and sworn to before me by the said Edward Dufresne.

(Signed) ARETAS R. SANBORN,
Notary Public.

Also deposition of LOWELL CARVER, taken at the same time and place for the purpose mentioned in the caption and all the stipulations therein mentioned:

Q. 65. What is your age, residence, occupation, and name?

Ans. Lowell Carver; my age is fifty-seven years; I reside
414 at Lawrence, Mass.; my occupation is that of market man or provision dealer.

Q. 66. State whether at any time you were in the employment of the Atlantic Cotton Mills at Lawrence, Mass.; and, if so, about what time, as near as you can remember, and in what capacity.

Ans. Between 1855 and 1860 I was in the employ of the Atlantic Cotton Mills under H. K. Oliver. I was employed in the cloth-room, first baling and then as second hand stamping and preparing goods for the market.

Q. 67. Have you been in the employment of said Co. at any time since 1865?

Ans. No; I have not. In 1865 I went to England.

Q. 68. State, according to the best of your recollection, whether or not at any time during your employment at said Atlantic Cotton Mills any goods—any cotton sheetings—manufactured at said mills was stamped and put into bales with the capital letters L L.

Ans. We stamped and baled many goods marked "Atlantic Cotton Mills L L" while I was there. They used the words Atlantic Cotton Mills above the trade-mark.

Cross-examination:

Q. 69. Has any one refreshed your memory about this matter?

Ans. Not in any particular.

Q. 70. Can you now state from your memory all the brands and

stamps used by the Atlantic Mills during the time you were in its employ?

Ans. No; there were many kinds that were damaged, and we put fancy brands on them. I cannot remember all of them now. All our straight goods were marked "Atlantic Cotton Mills." They had different widths of cloth, and those were marked by letters, representing widths, so that we who were packing them understood it.

Q. 71. What width were the goods you say were stamped L L?

Ans. Approaching a yard; I will not swear positively.

(Signed) LOWELL CARVER.

Subscribed and sworn to before me this 24th day of May, A. D. 1886.

(Signed) ARETAS R. SANBORN,
Notary Public.

415 COMMONWEALTH OF MASSACHUSETTS, *ss:*

This is to certify that Lowell Carver, Edward Dufresne, the above-named deponents, appeared before me at 10 o'clock a. m., on the twenty-fourth day of May, A. D. 1866, at Lawrence, Mass., and gave the foregoing depositions to be used in an action of —, now pending between Lawrence Manufacturing Co. and Aurora Cotton Mills, Evansville Cotton Manufacturing Co., Tennessee Manufacturing Co., and Beaver Dam Cotton Mills, before the United States circuit court for the respective districts shown in the caption; that prior to his examination the said deponent was duly sworn by me to testify the truth, the whole truth, and nothing but the truth relating to the cause for which said deposition is taken; that both parties to the said action had an opportunity to examine the said deponent, as in the statute provided; that the said deposition was reduced to writing by me; that it was carefully read to the said deponent, and was then subscribed by him; that the said deposition was taken at the request of the defendant in said actions, the said deponent being —, and that the complainant, by W. G. Rainey, its counsel in said actions, attended at the taking of said deposition, all formalities as to notice, form, caption, and certificates being waived.

Dated at Lawrence this 24th day of May, A. D. 1886.

[SEAL.] (Signed) ARETAS R. SANBORN,
Notary Public.

416 The United States Circuit Court for District of Indiana.

LAWRENCE MANUFACTURING CO.

vs.

EVANSVILLE COTTON MANUFACTURING CO.

Testimony taken on behalf of the defendant, by agreement, previous notice having been served, but all formalities as to notice, caption, time, and place and certificates being waived, before Ealeazer Jackson, a notary public of the State of New York, duly commissioned and qualified as such, and residing in the city of

New York, in said State of New York, commencing September 1st, 1886, at 11 a. m.

Present: J. H. Raymond, for complainant, and James S. Frazer, for defendant.

JUNIUS A. CLIFTON, being first duly sworn and being interrogated by Mr. FRAZER, testifies as follows:

Q. 72. Please state your name, age, residence, and occupation.

Ans. Junius A. Clifton; age, 56 years; Brooklyn, N. Y.; dry-goods merchant.

Q. 73. Please state how long you have been in business, and where.

Ans. Over thirty years; twenty-five years in New York; previous to that in Baltimore.

Q. 74. State whether or not it has been the custom, well known in the trade, for mills making several grades of sheeting to indicate the different grades made by them by letters of the alphabet.

Ans. It is.

Q. 75. State whether or not it is a fact that all or nearly all of the letters of the alphabet are in use for this purpose by manufacturers to indicate the grade or quality of their goods.

Ans. Many of the letters of the alphabet are. I could not say all.

Q. 76. How are these letters used?

Ans. Well, they are used singly—for instance, "E." You will find double A and you will find "X I X," "L L," and various letters.

Q. 77. My question was intended to ascertain how the letters are placed upon the goods.

Ans. You mean on the face of the goods, the stamping. They are stamped on the face of the goods. They may be in different positions.

Q. 78. State whether or not it is a fact that these letters are stamped alone on the sheetings, or whether they are accom-
417 panied by the name of the mill making them, or by some fancy name or private brand of merchants dealing in them.

Ans. I will answer that by saying that I have never seen sheetings stamped only with the letters; they will have a brand, for instance, call the name whatever you please, and they may have the letters and they may not have the letters.

Q. 79. State whether or not it is understood in the trade that these letters when stamped on sheetings indicate the name or the goods of any particular manufacturer.

Ans. Not unless that manufacturer has his brand on them; the letters alone would not indicate his make—the simple stamping of the letters.

Q. 80. Please state if you know of any goods weighing four yards to the pound made by the Lawrence Mills, of Lowell, Mass.; if so, describe the brands upon those goods.

Ans. I have seen the sheeting which is called the Lawrence double L sheeting, said to weigh four yards to a pound, with their stamp,

"Lawrence Mills," I think, with the double L underneath a solid block letter. I never handled the goods, and I do not know the weight only by reputation.

Q. 81. Does anything else appear on the brands besides what you have indicated?

Ans. I have seen the bull head upon the brand at the top of the goods.

Q. 82. Please state what the letters "L L" indicate to the trade when stamped on the Lawrence sheetings.

Ans. Their four-yard sheeting, so known in the trade; it is a designated mark for that weight of goods.

Q. 83. Please state whether or not, of your own knowledge, the letters "L L" are used upon brown sheetings made by other manufacturers.

Ans. I could not state that of my own knowledge. I am satisfied they are, but I have never seen them.

Q. 84. How are these Lawrence four-yard goods described in the trade when spoken of?

Ans. As Lawrence double L.

Q. 85. State whether or not it is uniform with all manufacturers to use the same letters upon brown cotton made by them of the same weight.

Ans. I should say not; the letters are varied. For instance, we have handled four-yard sheeting stamped "W," made in Petersburg, Va. You will find different letters on the same weight of goods, on goods representing the same weight.

Q. 86. State whether or not it is a fact that in ordering sheetings the trade make use of the letters used by the manufacturer
418 to indicate the grade of sheetings that the purchaser desires to buy.

Ans. I should say yes; they order by letters—"Lawrence L L," "Atlantic P," or whatever the sheeting wanted.

Q. 87. Please state whether or not it is the custom to designate the goods of a particular manufacturer by the letters stamped on those goods without, at the same time, using or naming the name of the mill, the fancy brand or private stamp which is stamped on the goods in connection with the letters.

Ans. I should say it is not the custom.

Cross-examination by Mr. J. H. RAYMOND:

Q. 88. Are you a member of the firm of Aldrich, Iddings & Clifton, dry-goods commission merchants, of New York?

Ans. Yes, sir; I am.

Q. 89. Is it also true that the largest part of your business is in selling Southern manufacturers, is it not?

Ans. The largest part of our business is in selling goods made in Pennsylvania and dealers in New England.

Q. 90. What portion of your trade, speaking in round numbers, is in the South?

Ans. At present nothing.

Q. 91. That has recently come to be so, has it not?

Ans. Yes, by the disaster to the mill that was washed away—the mill we had in Alabama; in Baltimore we have dealings, but nothing south of it.

Q. 92. What is the name of the mill in Alabama?

Ans. The Prattville Manufacturing Co.

Q. 93. Do you now handle or have you heretofore handled any four-yard cotton goods?

Ans. We have.

Q. 94. Of what make?

Ans. Swift Creek Co., of Petersburg, Va.

Q. 95. Any other?

Ans. Not of recent years.

Q. 96. Have you or have you not while handling those goods received orders which would read in substance like this: "Please send me so many pieces or bales of 'W?'"

Ans. I do not remember ever having seen such an order; the orders have always come "Swift Creek sheetings" or "Swift Creek W."

Q. 97. How long since have you ceased to handle those goods?

Ans. About two years.

Q. 98. And for how long did you handle them?

Ans. For a number of years. I should say 7 or 8 or 9 years; until the mill got into trouble.

419 Q. 99. Can you state in yards per week about the amount of the output of four-yard sheeting by that mill during the time that you handled their goods?

Ans. I could not without looking at our books.

Q. 100. Would it be, in your opinion, as near as you can now state, 25 or 50 or 100 bales per week?

Ans. Well, at a low estimate, I should put it at 25.

Q. 101. It is also true, is it not, that a considerable portion, and if so, in round numbers, what portion, of your business during recent years has been in colored goods?

Ans. Well, a very large portion, but as to figures I could not give them to you.

Q. 102. The Swift Creek goods were the only four-yard brown cotton goods you have ever handled, I understand?

Ans. No; not that we have ever handled, but all we have handled of recent years, within the last 7 or 8 years, I should say.

Q. 103. Where were they mostly sold?

Ans. In New York, Philadelphia, Baltimore, in the Southern cities, California, Texas.

Q. 104. What in the trade does the word "Wamsutta" mean?

Ans. A fine bleached cotton or brown cotton; they have it on both.

Q. 105. Does that word designate that the goods were made by any particular company?

Ans. The Wamsutta Company.

Q. 106. Is that the name of the company?

Ans. Yes, I think.

Q. 107. What in the trade does the word "Fruits" mean?

Ans. It is a fancy brand put on bleached cotton made by B. B. and R. Knight; that is their brand on their bleached goods; it is an abbreviation for "Fruits of the Loom."

Q. 108. What in the trade does the letter "P" indicate?

Ans. It would depend very much where you would find it. On sheetings, for instance, it would designate the quality of the sheetings or the grade of the sheeting. For instance, the Atlantic Mills have various letters. On one of their grades they have the letter "P."

Q. 109. What grade is that?

Ans. I think it is their four-yard sheeting; I am not sure, but I think it is.

Q. 110. Do you remember of any other four-yard sheeting in the market now or at any time heretofore marked with the letter "P?"

Ans. I do not.

420 Q. 111. Then the letter "P," when talked about on the street, in the trade, or written about, would indicate a four-yard sheeting made by the "Atlantic Mills?"

Ans. Not unless the Atlantic Mills were mentioned. If a man should order a sheeting simply "P" sheeting, it would be very difficult to the party receiving it to fill the order, I should judge.

Q. 112. Supposing I was ordering of you to-day some goods for which you are the regular selling agent, and that I was a regular customer of yours, and should ask you as an accommodation to me to ship to me at the same time so many bales of "P" sheetings, and I said nothing more by way of designation what I wanted.

Ans. If I was the agent of the Atlantic Mills——

Q. 113. That is not the question.

Ans. Well, I was going to state why I would or would not send you the sheetings.

Q. 114. The question is, Suppose the order came to you in that way as I have designated it, would you fill the order?

Ans. I would not.

JUNIUS A. CLIFTON.

And thereupon the further taking of testimony was adjourned until Thursday, September 2, 1886, at 11 a. m.

NEW YORK, *September* 2, 1886.

Parties met pursuant to adjournment.

Present: J. Raymond, for complainant, and James S. Frazer for defendant.

Witness HENRY A. COBURN, being duly sworn and examined by Mr. FRAZER, deposes as follows:

Q. 115. Please state your name, age, residence, and occupation, and how long have you been engaged in your present business?

Ans. Henry A. Coburn; age, 49 years; St. Stephen's Hotel, New York city; buyer of dry goods for out-of-town houses since 1873.

Q. 116. What character of goods do you buy for these houses?

Ans. Domestics only—that is, as a rule.

Q. 117. If you have been in the dry-goods business previous to 1873, state in what capacity and how long you were engaged, and where.

Ans. I commenced in 1848, February 1st, in Hanover St., Boston; No. 37 was the number.

Q. 118. In the dry goods business?

Ans. In the dry goods business.

421 Q. 119. Since the beginning of your connection with the dry-goods business up to the present have you been familiar with brown cotton sheetings?

Ans. All kinds of cotton goods—brown, bleached, and everything that comes under the head of cotton goods.

Q. 120. State whether or not it has been and is now a custom well known in the trade for mills making several grades of brown sheetings to indicate the different grades made by them by letters of the alphabet, either singly or in conjunction with the others stamped upon the goods.

Ans. They all use the alphabet; that does not interfere with any letter; they can use any single letter or double letter; they can use whatever they see fit—that is, in the English alphabet.

Q. 121. State whether it is the custom of the trade to stamp these letters alone on the sheetings or whether it is customary to stamp the sheetings in addition to the letters with the name of the mill or some fancy name adopted by the mill.

Ans. It is customary to use fancy brands. For instance, "Appleton X X," fancy brands with double L. I have used the double L on Appleton double X brand. I would not take the Appleton double X at any price unless Upham, Tucker & Co. would put the double L on it.

Q. 122. How do the mills stamp their brown sheetings to indicate who is the manufacturer of them?

Ans. There is nothing of that kind that I am aware of showing who is the manufacturer; they go by brands.

Q. 123. State whether or not it is understood in the trade that these letters stamped on brown sheetings indicate the name or goods of any particular mill.

Ans. Every stamp indicates, to a certain entent, the goods made by certain corporations, but your question is a very peculiar one, because I do not use one-half of the goods you name. I do not buy under the regular tickets.

Q. 124. Is it not understood in the trade that the letters "A P," "X X," "L L," or similar letters stamped on goods indicate the name or the goods made by any particular mill?

Ans. They do; but he is getting entirely off in his question, because you can take six or seven yard goods of the goods he mentions, or you can take four-yard goods of the goods he mentions. That is not coming to the point.

Q. 125. If you know of any four-yard brown cotton goods of

Lawrence Mills, Lowell, Mass., please state what letters are stamped on them.

Ans. Double L.

422 Q. 126. State what these letters double L indicate to the trade when stamped on Lawrence brown sheetings.

Ans. A four-yard brown cotton called standard four-yard.

Q. 127. If you know of any brown sheeting stamped "L L" made by Atlantic Mills of Lawrence, Mass., state what these letters indicate to the trade when stamped on their goods.

Ans. A fine brown; standard weight should be 4.75.

Q. 128. Do you or not know a brown sheeting stamped "X X" made by the Lawrence Mills; if so, what do the letters "X X" indicate to the trade?

Ans. Indicate a finer yarn goods—calendered.

Q. 129. State whether or not the trade gives any significance——

WITNESS: That is a question I do not want to answer.

Mr. FRAZER:

Q. 130. Or attaches any meaning to the letters "L L" other than that given them by the mills which use them upon their particular goods?

Ans. I do not think they have any right more than any one else to use the letters double L in the alphabet. Why I said that was a question I did not want to answer was because I had reference to the letters double X.

Q. 131. State whether or not any letters stamped on brown sheeting unaccompanied by the name of the mill is understood in the trade to indicate the name of the mill that makes the goods.

Ans. I do not quite understand that.

Q. 132. Read it over to him.

Ans. Not at all.

Q. 133. Are there or not any brown cotton goods which are known to the trade simply by the letters "L L" without any accompanying words or description?

Ans. Plenty of them.

Q. 134. If you should receive an order for so many bales of "L L" cotton, without any other words of description, would you or not know from that alone whose manufacture of goods is desired?

Ans. I should not.

Q. 135. Do you not believe the trade would place the same construction on the order as you stated?

Ans. They would have to name the brand, otherwise I would have to write for instructions as to what brands they desired.

Q. 136. The question was would the trade put the same construction on such an order as you have stated is your construction?

Ans. Yes, sir.

Q. 137. State how the Lawrence Mills brown cotton which are stamped "L L" are described in the trade when spoken of or written about?

423 Ans. By their stamp, Lawrence double L. They have a brand, but I think they have changed it now. It was formerly a bull; the original was formerly a bull.

Q. 138. What is it now?

Ans. I do not know; I never look at the stamp; I just give my order for what I want, 50 or 100 bales, whatever it is; buy them by the brand.

Q. 139. State whether or not it is the custom for the trade, in ordering brown sheeting, to indicate by the letters stamped on them the weight or grade of goods desired.

Ans. All orders are given to me for brand or weight. Every sheeting has a standard weight, whether it would be 7 yards or 10 yards.

Q. 140. If the sheetings of any particular mill are desired is it the custom to order by the letters alone which are stamped on the goods, or is it customary to give the name of the mill or the fancy brand stamped on the goods in connection with the letters?

Ans. That is a double question, is it?

Q. 141. Yes, sir—alternative.

Ans. We buy by the alphabet, the letter. Our fancy brands belong to us and no one else; only one party can use them.

Q. 142. If the sheetings of any particular mill is desired how is the order given for them, by the letters above or, in addition to the letters, the name of the mill?

Ans. By letters only.

Q. 143. That is, then, if I understand you, if you want to buy Lawrence goods you would not name the word Lawrence, but would simply use the letters which are stamped upon that particular grade of goods?

Ans. Letters only.

Q. 144. Then, as I understand you, the letters stamped on any goods indicate the name of the manufacturer, do they?

Ans. No; the grades of goods.

Q. 145. Then, if you want the goods of a particular manufacturer you do not order by the letters alone, do you?

Ans. I buy them by the alphabet—the letters that are stamped on them; at least the stamp on them.

Q. 146. If you have an order for so many bales of "X X" what manufacturer do you understand it refers to?

Ans. Nothing, because the brand is named.

Q. 147. Well, then, in point of fact, buyers of goods name the brands as well as the letters stamped on the brands, do they not?

Ans. Always.

Q. 148. Both together?

Ans. Always.

Q. 149. Do you know a brown cotton in this market stamped Shawmut double L?

424 Ans. I do. They are seconds of the Lawrence double L.

Q. 150. Are they of the same grade and quality of the goods as the Lawrence double L?

Ans. Made on the same looms.

Q. 151. Are they of the same value in the trade?

Ans. No, sir.

Q. 152. What is the difference in them?

Ans. From 2½ to 5 per cent., according to stock on hand.

Q. 153. Then they are of the same quality, are they?

Ans. They are—that is, the seconds. The weight is the same.

Q. 154. If they are of the same quality would they not command the same price?

Ans. No, sir; not on a second ticket.

Q. 155. Do you know of any other four-yard brown cotton in this market which are stamped double L?

Ans. Only my private stamps, which goods are made by Upland, Tucker & Co.

Q. 156. Is it not well understood in the trade that the goods you have just mentioned and stamped double L are made by a different mill from the Lawrence double L brown cottons?

Ans. They are made by different mills.

Q. 157. I asked whether it was well understood in the trade that they were.

Ans. That is a question that I could answer, but I prefer not, as they are better than Lawrence double L, and I do not want to answer the question.

Cross-examination by Mr. RAYMOND:

Q. 158. Mr. Coburn, please give us the brands made by Upham, Tucker & Co. for you which have the double L on them.

Ans. I could not give them all without referring to my books.

Q. 159. Please give us such of them as you now remember.

Ans. One is Longwood double L; Housewife, I think, is another; Buckeye Ohio State; that is another. The balance I could not tell you because I would have to refer back to get them.

Q. 160. How long have you used these private brands?

Ans. About ten years.

Q. 161. All of them?

Ans. Yes, sir.

Q. 162. In round numbers, then, as you can remember, what has been the average amount, either in bales or in yards, per week, of the output Longwood?

Ans. I could not give you the least estimate in the world, sir.

425 Q. 163. Can you of the Housewife?

Ans. I could not. At times, you know, my orders vary. In days gone by I used them freely, but when you come down to bales I could not tell you, but I had the goods increased in length from 38 to 58 yards or along there, and five pieces more added to the bale.

Q. 164. Would you say that this average output was nearer to twenty or forty or eighty or 100 bales per week?

Ans. I could not answer that, sir.

Q. 165. Would you say it was less than fifty?

Ans. Sometimes I would use fifty bales at a time and then again I would not hear from them for two weeks. I should say from 10 to 20 bales a day on an average.

Q. 166. You have a very thorough conviction, Mr. Coburt, have

you not, that it is impossible for any one to acquire a valid and legal trade-mark in the letters in the alphabet?

Ans. I do not think any one has any claim on them.

Q. 167. You do not think any one could get any legal claim on the letters of the alphabet in cotton goods?

Ans. I do not, on cotton goods.

Q. 168. What is the weight of the Appleton "X X," which you have had branded double L?

Ans. It is called a four-yard sheeting—weighs heavy four.

Q. 169. About 4-60?

Ans. No; heavy four.

Q. 170. Less than 3-95?

Ans. Yes; would average near that, but the brand is called four-yard sheeting, same as Lawrence double L.

Q. 171. What has been the width of the fold of the Appleton double X, which you have marked double L?

Ans. The same as Lawrence.

Q. 172. About 18 inches?

Ans. Thirty-six inches to the yard, folded once, making about 18 inches.

Q. 173. While you said to Mr. Frazer, "I do not use your goods under the regular tickets," to what goods did you refer?

Ans. Appleton double X.

Q. 174. Are you familiar and have you been with the four-yard sheeting which has been bought and sold with the letter "P" stamped on it?

Ans. Yes, sir.

Q. 175. What sheetings are those?

Ans. Atlantic; made in Lawrence, Mass.

Q. 176. Did you ever know any other four-yard goods with that letter stamped upon them?

Ans. "P?"

426 Q. 177. Yes?

Ans. No, sir.

Q. 178. Then if you should get an order from a country customer for so many bales of 'P' brown sheeting what would you send them?

Ans. Atlantic "P."

Q. 179. You have also received, have you not, not infrequently, orders from country customers which would read, "Please send me so many pieces or bales of double L brown sheetings?"

Ans. Never, unless the brand was named.

Q. 180. By the brand you mean something besides the letters?

Ans. Graniteville double L, for instance.

Q. 181. Are you acquainted with the Pacolet four-yard sheetings?

Ans. I know the goods.

Q. 182. Have you ever handled them?

Ans. I have bought a piece or a bale.

Q. 183. Did you ever buy any of the Graniteville?

Ans. Immense quantities.

Q. 184. Are you sure that you never have received an order from

any Western customer for so many bales or pieces of double L brown cotton without any other designation of the brand that they wanted?

Ans. Never in my life. They always designate.

Q. 185. You bought a great many goods from Smith, Hogg & Gardner and of Townsend & Yale?

Ans. Not many, but rather from George C. Richardson & Co.

Q. 186. Is the firm of Miles, Bancroft & Sheldon, of Columbus, Ohio, a customer of yours?

Ans. Yes; some 21 years.

Q. 187. Have you never received from them orders reading simply for so many bales or pieces of double L brown cottons and filled the order with the Lawrence double L?

Ans. I have filled with Lawrence double L, as Lawrence double L were ordered; also with Graniteville double L.

Q. 188. Have you not filled orders for that firm with Lawrence double L, which order did not contain the word Lawrence?

Ans. I have not.

Q. 189. Are you positive of this?

Ans. Well, I am a pretty positive man, but I never fill an order unless as it is written.

Q. 190. What is the standard double L sheeting in the trade with which you are familiar?

Ans. Four-yard goods.

Q. 191. Of whose make?

Ans. Aurora, Crescent, Lawrence, and Upham & Tucker's goods.

427 Q. 192. You would call them all standards, would you?

Ans. All four-yard standards.

Q. 193. Are they sold at the same price?

Ans. No, sir; I have paid more for Upham, Tucker & Co. goods than I have for Lawrence.

Q. 194. How about Lawrence as compared with the others? Are not the Aurora and Crescent and other Western goods, as a rule, and on an average, sold a shade less than Lawrence?

Ans. They deliver the goods at the points where they are to go free of freight.

Q. 195. Are you acquainted with the handwriting of Mr. Bancroft, of Miles, Bancroft & Sheldon?

Ans. Yes, sir; his name is Howard Bancroft.

Q. 196. Please look at the letter I now show you and state in whose handwriting it is.

Ans. This is Mr. Bancroft's writing—Howard.

Said letter is offered in evidence and marked "Coburn Exhibit."

Defendants' counsel excepts to the introduction of this letter as irrelevant and *inter alios.*

It is agreed that the said letter shall be copied upon the record in lieu of the attachment of the original, the original to be retained by plaintiff's counsel, and the said letter is as follows:

Miles, Bancroft & Sheldon, manufacturers and jobbers of dry goods and notions, 97 and 99 North High street; New York office, 50 Leonard St.

COLUMBUS, O., 6, 25, 1886.

Mr. G. H. Warner.

DEAR SIR: Yours of 25th rec'd. If my memory serves me right, you told me in April that you would keep me posted as to price of L L, as I talked of buying more. Do you not think we have a back order for 5 or 10 bales unfilled? Can you work it?

Yours, H. C. BANCROFT.

O. K.

WARNER.

Q. 197. Who is Mr. G. H. Warner?

Ans. He is a man that has been with Geo. Langdon & Co. for several years, but now with Townsend & Yale, taking care of the Lawrence account in cotton goods.

Q. 198. On June 25, 1886, he was with Townsend & Yale, in charge of this Lawrence cotton goods account, was he not?

Ans. Yes, sir; cotton goods account.

428 Q. 199. The letter refers to a back order for 5 or 10 bales of double L goods. Have you any recollection about the original of that back order and by whom it was given to Townsend & Yale, and whether that order read for five or ten bales of double L or for five or ten bales of Lawrence double L? Is it not a fact that that original order was received by you and read simply for so many bales of double L without the word Lawrence, and that you turned that order over to Messrs. Townsend & Yale? State all that you recollect about the transaction to which I refer.

Ans. That was an order direct from Mr. Howard Bancroft to Townsend & Yale. It did not come to me.

Q. 200. This letter is a direct letter from Mr. Bancroft to Messrs. Townsend & Yale, but it refers to a back order then remaining unfilled when this letter was written, and the question is whether that old order so then remaining unfilled was not received by you.

Ans. No; sent direct.

Q. 201. You are positive about this, are you?

Ans. I am pretty positive, sir.

Q. 202. Did you receive any orders from Miles, Bancroft & Sheldon in the months of May or June for four-yard sheetings?

Ans. I did.

Q. 203. Who did you buy them from?

Ans. I bought them of Teftweller and H. B. Claflin.

Q. 204. Did you during those months buy any four-yard sheetings of Townsend & Yale?

Ans. In June.

Q. 205. In May or June?

Ans. In June; for Isaac L. Lesem & Co., of Quincy, Ill.

Q. 206. When did you give to Townsend & Yale your last order, four-yard sheetings, on account of Miles, Bancroft & Sheldon?

Ans. I do not remember of giving them any order on that account for Miles, Bancroft & Sheldon.

Q. 207. Ever?

Ans. Never. I do not remember of ever giving them any. George C. Richardson & Co. had my large orders. I bought very few goods from Townsend & Yale.

Q. 208. Supposing you should receive to-day from Miles, Bancroft & Sheldon an order to buy for them 50 bales of double L brown cotton without any other designation.

Ans. I should wire them asking what brand they wished.

Q. 209. You have a competing brand of your own?

Ans. I have them.

Q. 210. You have one?

429 Ans. Yes, sir; I can give it to you if you like it.

Q. 211. What is it?

Ans. Graniteville H H H.

Q. 212. What does H H H denote or signify in the trade?

Ans. Four-yard brown cotton.

Q. 213. Any one else use those letters?

Ans. Probably; I do not know.

Q. 214. Did you ever see or hear of their use by any one else on four-yard brown cotton?

Ans. No, sir.

Q. 215. Why do you say that they are probably used by others?

Ans. As long as they do not go to the same city I do not care who uses them.

Q. 216. That is not quite my question, Mr. Coburt. You say they are probably used and yet you never heard of their being used?

Ans. I have no knowledge of their being used.

Q. 217. Then H H H mean four-yard cotton goods made by Graniteville Mills, do they not?

Ans. Yes, sir.

Q. 218. You built up a good reputation under those three H's?

Ans. Doing well.

Q. 219. The Atlantic people are doing well under their letter P, are they not?

Ans. The letter "P" are sold way ahead.

Q. 220. The letter "P" in the trade for brown cotton means four-yard goods made by the Atlantic Mills, does it not?

Ans. It does.

Q. 221. Now, in that same way where any manufacturer has a large line of trade under any particular letters of the alphabet those letters indicate certain grade of goods made by those particular manufacturers, do they not?

Ans. They do, sir.

Q. 222. Now, that is not true with the trade, as a matter of fact, where several manufacturers have a large output and have for a good many years used the same letters, as, for instance, X, double X, triple X, A, and A L and X Y Z; that is not true, is it not?

Ans. Yes, sir.

Q. 223. So there is a difference in the trade between the use of

X Y Z, for instance, on one hand and the use of H H H on the other, is there not?

Ans. Different grades.

Q. 224. Is there not still other differences besides that of the grade?

Ans. No.

— 225. H H H means your goods, do they not?

Ans. They mean the Graniteville goods.

Q. 226. Now, Mr. Coburt, are you positive that you never
430 received an order for any brown cottons which gave simply the letters without naming the corporation by which they were made?

Ans. The name was on the goods, the brand at least.

Q. 227. Did you ever receive any orders for so many pieces or bales of H H H goods without the Graniteville being written?

Ans. Never in my life.

Q. 228. As far as you know that is not the custom?

Ans. It is not the custom.

Q. 229. Supposing thirty reputable men or less, on oath, should state that Atlantic four-yard goods were ordered and spoken of and invoiced simply as "P brown cotton," then you would say, would you not, that as to these particular goods it was the custom of the trade to designate them by this letter without the name Atlantic, would you not?

Ans. I should not buy them unless ordered Atlantic P.

Q. 230. Knowing that there is no other brown cotton now in the market and has not been for a great number of years bearing the letter P?

Ans. There was Lyman P some years ago.

Q. 231. How long since Lyman P goods have been upon the market?

Ans. Fifteen years.

Q. 232. Very well, then; now, knowing that for fifteen years there has not been upon the market a brown cotton with the letter P on it and I a, thousand miles away should, send you an order for so many bales of "P" brown cotton, you would, without hesitation, fill that order with Atlantic goods, would you not?

Ans. I might buy Portsmouth P.

Q. 233. What is Portsmouth P?

Ans. Amadon Smith's goods.

Q. 234. Of what weight?

Ans. Print cloth branded Portsmouth P.

Q. 235. That is, it is a brown cotton intended to be printed, or is it already printed?

Ans. It is stamped and to be sold for linings.

Q. 236. Suppose I should give you such an order for so many bales of P brown sheetings, then would you not, without hesitation, fill that order with Atlantic P?

Ans. No, sir; not without wiring.

Q. 237. Why would you wire?

Ans. I want everything just as plain as plain can be.

Q. 238. Could such a telegram mean anything else possibly than Atlantic P goods?

Ans. Yes; there are fancy brands in the market belonging to different people.

431 Q. 239. There is, however, no fancy brand in the market for brown sheetings involving the letter "P," is there?

Ans. Numbers of them, but they belong to parties. They are branded to suit them.

Q. 240. Give me an instance of a four-yard brown sheeting other than that made by the Atlantic Mills which is sold with the letter P upon the stamp.

Ans. I should have to send West to get my brands.

Q. 241. Is there any such brand?

Ans. I think Lesem has one with "P" on it.

Q. 242. Does Mackey, Nisbet & Co. or, in other words, the Evansville Cotton Manufacturing Co., called the Crescent Mills, make for Lesem a four-yard brown cotton which is stamped with the letter P.

Ans. I have said I would not swear to it, but I thought so. They put whatever letters my customers want on goods.

Q. 243. You think you have done this?

Ans. I would not swear to it.

Q. 244. But it is the custom of Mackey, Nisbet & Co., or the parties to whom I have just referred, to put on any brand that your customers want?

Ans. Yes, sir; any brand or letter.

HENRY A. COBURN.

Thereupon the further taking of testimony was adjourned until to-morrow, Thursday, September 2d, at 2 p. m.

NEW YORK, *September 2d*, 1886.

The taking of testimony was resumed pursuant to adjournment at 2 p. m.

Present: Same parties as before.

E. P. SMITH, a witness produced on behalf of the defendants, being first duly sworn and interrogated by Mr. FRAZER, testified as follows:

Q. 245. Please state your name, age, residence, and occupation, and how long you have been engaged in this business.

Ans. E. P. Smith; residence, New York; age, 46 years; dry-goods commission business for about 25 years in Baltimore and New York.

Q. 246. During this time what familiarity have you had with the brown sheeting trade and the different grades of said sheeting?

Ans. Well, we have sold many thousand bales, both for home consumption and export.

Q. 247. State what method of stamping brown sheetings is usually adopted by the mill to indicate to the trade a grade or quality of goods.

Ans. We generally brand them by the name, sometimes a letter and sometimes a number, sometimes simply a name.

Q. 248. State whether or not it has been and is now a custom well known in the trade for mills making several grades of brown sheetings to indicate the different grades made by them by letters of the alphabet, either singly or in conjunction with others, stamped upon the goods.

Ans. Yes; that is customary; in many cases it is customary.

Q. 249. State whether it is the custom of the trade to stamp those letters alone on the sheetings or whether it is customary to stamp the sheetings in addition to the letters with the name of the mill or some fancy name adopted by the mill.

Ans. They generally use the letters with the name of the sheeting; use the letters in connection with the name. I never have known of a piece of brown sheeting being sent to the trade with simply a letter or letters stamped thereon, and am sure that no sheetings have ever been sent out of the trade in that way, unless they are stamped with the name of the mill or some fancy name in addition with the letters.

Q. 250. State whether or not it is understood in the trade that these letters when stamped on sheetings indicate the name of any particular mill.

Ans. Not always.

Q. 251. If you know of any four-yard brown sheeting made by the Lawrence Mills of Lowell, Mass., state what letters are stamped on them.

Ans. The Lawrence double L, they call them.

WITNESS: Don't they; isn't that what they call them?

Q. 252. State what these letters double L and stamped on Lawrence goods indicate to the trade?

Ans. They indicate the name on certain brand of sheetings, known as Lawrence, *Ills.*

Q. 253. What grade of goods do they indicate to the trade, if any?

Ans. Four-yard goods.

Q. 254. If you know a brown sheeting stamped "L L" made by the Atlantic Mills of Lawrence, Mass., state what these letters indicate to the trade when stamped on their goods.

Ans. Simply indicate the brand that they use. I do not know that they have any double L. I do not think they have.

Q. 255. Are there or not any brown cotton sheetings known to the trade simply by the letters "L L" without any accompanying words of description?

Ans. Not that I know of.

Q. 256. If you should receive an order for so many bales of "L L" brown cotton sheeting without any other words of description would you or not understand from that alone whose manufacture of goods was desired?

433

Ans. No; I would not.

Q. 257. Do you or not believe the trade would place the same construction upon the order as you have stated as your belief?

Ans. I think so.

Q. 258. How are the Lawrence brown cotton sheeting which are

stamped with double L described in the trade when spoken of or written about?

Ans. They are described as Lawrence double L sheetings.

Q. 259. State whether or not it is the custom of the trade in ordering brown sheeting to indicate by the letters stamped upon them a weight or grade of goods desired.

Ans. It is customary to order them by the brand and letter and width.

Q. 260. What do you mean by the brand?

Ans. The name of the goods and letters used.

Q. 261. Give an instance of it—an illustration of what you mean by the word brand.

Ans. In our case a buyer ordering Augusta sheeting would probably say Augusta No. 1 sheetings, but in some cases they simply use Augusta 4-quarter sheetings—a yard wide that means.

Q. 262. If the goods of a particular manufacturer are desired how is that indicated to the merchant?

Ans. By the brands used on the goods. The buyers, as a rule, do not know where goods are made.

Cross-examination by J. H. RAYMOND:

Q. 264. What brown cottons do you handle and have you handled?

Ans. We have a number of them. Do you want a list of them or only a few?

Q. 265. I limit it to four-yard goods.

Ans. We handle the Enterprise E E four-quarter sheetings—Blue Ridge. I do not know whether they have a letter on it or not; I cannot tell without looking; Matthews double L.

Q. 266. Who makes the Enterprise E E?

Ans. Made by the Enterprise Manufacturing Co.

Q. —. Where?

Ans. Augusta, Ga.

Q. 267. What are the goods commonly known in the trade as Augustas?

Ans. Augustas.

Q. 268. Are they so commonly known in the trade?

Ans. By every one.

434 Q. 269. Simply as Augustas?

Ans. Yes.

Q. 270. Who makes the Blue Ridge sheeting?

Ans. Made by the Blue Ridge Manufacturing Co., Petersburg, Va.

Q. 271. The Matthews double L is a private brand of your own, is it not?

Ans. No, sir.

Q. 272. Who makes it?

Ans. Made by Matthews Cotton Mills Co.

Q. 273. Where are they?

Ans. Selma, Ala.

Q. 274. Do you sell the product of that mill exclusively?

Ans. Altogether.

Q. 275. At whose instance was double L put upon that brand of goods, yours or some one else?

Ans. They used it before we were agents for the mill.

Q. 276. How long have you been agents for the mill?

Ans. About two years, I think.

Q. 277. Do you handle any other four-yard goods that you now remember?

Ans. No; not strictly four yards.

Q. 278. Did you ever handle any of the Lawrence goods?

Ans. No, sir.

Q. 279. Never either bought or sold them?

Ans. No, sir.

Q. 280. Then you do not know how the written orders for those goods may or may not read?

Ans. Lawrence goods?

Q. 281, Yes.

Ans. No, I do not.

Q. 282. Do you know a brown cotton known in the market by the letter P?

Ans. I do.

Q. 283. What are they?

Ans. Atlantic P, I think.

Q. 284. You never handled them?

Ans. Never handled them.

Q. 285. But you do know that the brown cotton sheetings that are now in the market and known by that name are four-yard goods made by the Atlantic Mills?

Ans. They are are so represented; I never weighed them; they are so understood.

Q. 286. The largest part of your business is, or is it not, in colored goods?

Ans. We have never divided it; our business in brown goods is very large, and probably our sales for export in brown goods are as much as any firm here, with two exceptions.

Q. 287. But as to the domestic trade, your trade in colored goods is far in excess of your trade in brown sheeting?

435 Ans. I suppose it is, but we sell largely in brown goods for home consumption—probably all over city and country.

Q. 288. And your sales in brown cotton sheetings is limited almost entirely to Southern manufacturers, is it not?

Ans. The majority of them are Southern-made goods.

Q. 289. Have you any private brands of your own for four-yard brown cotton sheetings?

Ans. We make no goods and have no private brands.

Q. 290. Do not handle private brands?

Ans. No, sir; except private brands ordered by buyers, which we have put on goods for them by the manufacturers.

Q. 291. And so far as you know these four-yard brown sheetings are in competition with the Lawrence M'f'g Co. and their sales agents?

Ans. To a certain extent.

Q. 292. Is it not entirely so?

Ans. No, not entirely so.

Q. 293. Is it not so that your trade in four-yard brown cotton sheetings is in competition with the double L goods of the Lawrence M'f'g Co.?

Ans. Only to the extent that one grade of similar weight sheetings competes with another.

Q. 294. Generally speaking, they are of the same grade or class of sheetings, are they not?

Ans. Some of the brands mentioned handled by us are not as good a quality as the Lawrence double L and do not bring as much price.

Q. 295. Do you refer in your last answer to the Enterprise four-yard goods?

Ans. I decline to answer that.

Q. 296. You have said that you have no private brands except so far as used when required by buyers. Now, I would like to know, please, what private brands have been so required and have been so put on, so far as you know, by the Enterprise Company or the Evansville Company.

Defendant's counsel instructs witness that he has a right to decline to answer this question, and defendant's counsel further excepts to the question as irrelevant.

Ans. As far as the Evansville Company is concerned, we never have handled their goods and know nothing as to their business. As to brands used for buyers on Enterprise goods the brand belongs to the buyers, and we positively decline to give any information.

Q. 297. I understand you to say that you know nothing about the private brands involving the letters "L L" which are
436 stamped upon four-yard sheetings for buyers by the Evansville Company.

Ans. I know nothing about it.

Q. 298. And that you know that the Enterprise Company does do that thing, but you decline to give any further information about it.

Defendant excepts to this question as irrelevant.

Ans. I have never admitted that I knew it. I know positively that they do not and have never done so. On the contrary, when the mill began to make four-yard sheetings, we wished them to use double L. The president of the company declined, but adopted the letters double E, not from the fact that we had no right to use it, but simply wishing to establish a brand of our own.

Questions and answers No. 295 and No. 296 were here read to the witness.

Q. 299. Referring to the private brand used by buyers by the Enterprise Company, concerning which you have declined to answer, I desire to ask whether those private brands involve the letters double L.

Ans. I have answered that question before by stating the Enterprise Company have never used the letters double L.

Q. 300. Are you handling now or have you heretofore handled any four-yard brown sheetings branded double L' made by either Lawrence Manufacturing Co., the Evansville Company, the Aurora Cotton Mills, the Beaver Dam Cotton Mills, the Badger State Cotton Mills, or the Pacolet Mills or the Janesville Cotton Manufacturing Co.?

Ans. We have never handled any of them, but would be very glad to do so.

Q. 301. "E E" in the trade means four-yard brown sheetings made by the Enterprise Company, does it not?

Ans. No, it does not. If a buyer orders double E sheetings from us we should ask him, in all probability, if he did not mean Enterprise double E.

Q. 302. Suppose he should say I want so many bales or pieces of four-yard sheetings; please send me so many bales or pieces of double E. Would you then delay to ask him that question?

Ans. If we knew the buyer had been using Enterprise double E sheetings we should probably know what he meant, but in all our experience we cannot recollect of ever receiving an order in this way. Buyers order, as a rule, Enterprise double E. In some cases they may say Enterprise sheetings.

Q. 303. Are there not other four-yard brown sheetings in the market, or has there been, which are or were branded double
437 E, so far as you know; and, if so, by whom were they made?

Ans. I do not know positively, but there have been.

Q. 304. By whom were they made, so far as you know?

Ans. I do not know.

Q. 305. Did you ever see them in the market?

Ans. I think I have heard of other sheetings branded double E.

Q. 306. Were they four-yard sheetings?

Ans. I cannot recollect.

Q. 307. Of your own knowledge, you do not know that there is now or ever has been any four-yard brown sheetings in the market branded with the letters double E other than those made by the Enterprise Mill Co.; is that correct?

Ans. My impression is double E has been used, but I cannot positively state the circumstances.

Q. 308. Have you any positive impression that double E has been used in four-yard brown sheetings?

Ans. I cannot positively state on four-yard sheetings, but I have a strong impression that I have seen the double E used in other instances.

Q. 309. Are there any sheetings in the market to-day belonging to that class or grade that you know of or have heard of or have come in contact with that are branded double E?

Ans. Not that I know of.

Q. 310. Very well, then, if you should happen to receive an order to-day from a stranger with whom you have never dealt for so many bales or pieces of double E brown sheeting you would send him the

Enterprise goods without hesitation or delay, would you not, if he was a good customer and his credit was good?

Ans. We should not.

Q. 311. Why?

Ans. We should ask him if he meant the Enterprise.

Q. 312. Why should you delay to ask that question?

Ans. To avoid mistakes.

Q. 313. Would you have any possible doubt as to what goods he meant?

Ans. I might not, but at the same time would ask the question unless he had been a buyer of the double E.

Q. 314. Now, I will suppose that one of your regular customers should have a demand in his trade for other goods than those that you handle, should send you an order for some of your goods, and at the same time ask you as an accommodation to him to ship him at the same time so many bales or pieces of "P" brown sheetings; would you have any doubt as to what he meant?

Ans. I should, most positively.

438 Q. 315. Now, if I should ask you the same line of questions with reference to this subject ("P" brown sheetings) that I have just now asked with reference to "E E" brown sheetings, you would answer that line of questions in the same way, would you not?

Ans. I should, substantially.

ELIJAH P. SMITH.

Thereupon the further taking of testimony was adjourned until to-morrow, Friday, September 3rd, 1886, at 11 a. m.

NEW YORK, *September 3rd*, 1886.

The taking of testimony was resumed, pursuant to adjournment, at 11 a. m.

Present: Same parties as before.

SETH M. MILLIKEN, a witness produced on behalf of the defendants, being first duly sworn and interrogated by Mr. FRAZER, testified as follows:

Q. 316. Please state your name, age, residence, and occupation.

Ans. Seth M. Milliken; fifty years; New York city; dry-goods commission merchant and jobber, of the firm of Deering, Milliken & Co.

Q. 317. Please state how long you have been engaged in this business and what experience you have had in dealing in brown cotton sheetings.

Ans. We have been buying them for 21 years; we have been manufacturing or receiving them as commission merchants about 16 years.

Q. 318. State whether or not it has been and is now a custom well known in the trade for mills making several grades of brown sheetings to indicate the different grades made by them by letters of the

alphabet, either singly or in conjunction with others, stamped on the goods.

Ans. It is the custom of manufacturers to use letters under the names of their respective mills.

Q. 319. State whether it is the custom of the trade to stamp these letters alone on the sheeting, or whether it is customary, in addition to the letters, to stamp the name of the mill or some brand also.

Ans. It is the custom for them to put letters on with some brand of the mill also.

Q. 320. State whether or not it is understood in the trade that these letters stamped on sheetings indicate the name of any particular mill or the goods of that mill.

Ans. The letters mean nothing unless attached to the name of the mill.

439 Q. 321. Do you know of any four-yard brown cotton made by the Lawrence Mills? If yes, please state what letters are stamped on them.

Ans. I know a cotton that sells under the name of Lawrence double L, with a bull's head attached, called a four-yard sheeting. I have recently weighed one piece and it weighed 4-16.

Q. 322. State what these letters, double L, indicate to the trade when stamped on Lawrence brown sheetings.

Ans. I do not know.

Q. 323. Does it indicate that the goods are made by the Lawrence Mills, or simply a grade of goods made by the Lawrence Mills and used in conjunction with the words Lawrence Mills?

Ans. When the stamp of Lawrence Mills is on them it means made by Lawrence Mills.

Q. 324. Then state whether or not the trade gives any significance or attaches any meaning to the letters double L other than that given them by the mill which may use them.

Ans. The trade attaches no meaning to the letters alone.

Q. 325. Are there or not any brown cotton sheetings which are known in the trade and spoken of simply by the letters double L, without any accompanying letters of description?

Ans. I do not know of any.

Q. 326. Do you know of any other brown cotton sheetings in the trade which are stamped "L L" in addition to any other brand? If so, state what they are. I mean in addition to the brown cotton sheetings which are stamped Lawrence double L.

Ans. We formerly bought a cotton called Atlantic double L. I do not know that it is in the trade now. I am not positive that there are any others on the market now, but I think there are several brands with double L attached.

Q. 327. Have you or not ever heard in the trade of Pacolet double L, or Graniteville double L, or Badger State double L, or Victoria double L, or any others that you may know?

Ans. I have seen all of those except the Victoria double L.

Q. 328. If you should receive an order for so many bales of double L brown cotton without any other words of description would

you or not understand from that alone whose manufacture of goods was desired?

Ans. I should look to see if the person or the firm writing that letter had ever bought goods from us called double L with a mill's name attached or without it attached. If so, should send that cotton to him. If not, should write the person ordering the goods for more definite information.

440 Q. 329. Suppose the order came from a stranger with whom you had had no former dealings, what would you do then?

Ans. We should write him we did not understand his order.

Q. 330. Do you not believe the trade would place the same construction on the order as you have just stated?

Ans. I am inclined to believe—I do believe that the trade would send the person ordering the goods any double L brown cotton that he might have in his store.

Q. 331. Would the same be true if the order came for so many bales of "A" brown sheetings?

Ans. It would.

Q. 332. Or any other letter of the alphabet?

Ans. It would.

Q. 333. What is the weight of what is known as standard brown sheeting?

Ans. 2-85.

Q. 334. State whether or not there is any uniformity in the lettering used on this grade of brown sheeting by the different manufacturers.

Ans. There are several parties use the letter "A" in connection with their mill brand in different weights of goods.

Q. 335. My question had reference to the standard of 2-85.

Ans. There are different mills using the letter "A" with standard goods.

Q. 336. State whether that is uniform, or whether certain mills use different letters to indicate standard goods.

Ans. The different manufacturers use different letters on standard goods.

Q. 337. How are the Lawrence Mills brown cotton which are stamped double L described in the trade when spoken of or written about?

Ans. Some speak of them as the Lawrence double L with the bull's head and some as Lawrence double L alone.

Q. 338. State what you understand to be the trade-mark of the Lawrence so-called four-yard brown sheeting.

Ans. The Lawrence double L, with bull's head prominent on the piece of goods.

Q. 339. Is it or not well understood in the trade that the goods stamped Lawrence double L and the other brown cottons which are stamped double L, such, for instance, as the Pacolet double L, Graniteville double L, Badger State double L, etc., are made by different manufacturers?

Ans. It is.

Q. 340. Do you know of a so-called four-yard brown cotton stamped Shawmut double L?

Ans. I do.

Q. 341. State by whom it is made.

Ans. I believe it to be made by Lawrence Co.

441 Q. 342. State whether it has the same value in the trade or commands the same price as the Lawrence double L.

Ans. About the same price.

Q. 343. Less or greater?

Ans. Less.

Cross-examination by Mr. RAYMOND:

Q. 344. Your firm is the selling agent of the Pacolet Mills, is it not?

Ans. It is.

Q. 345. How long has it been?

Ans. Since the mill was completed.

Q. 346. When were the first Pacolet four-yard goods received by you?

Ans. About the 27th of February, 1884.

Q. 347. What has been the amount of the output of those goods since that date?

Ans. We put the production under different brands, some under fancy brands. The total production of four-yard goods are not far from 125 bales per month, I think.

Q. 348. Please give us the names of the fancy brands that you have just referred to.

Ans. I do not remember any of them without reference to our books.

Q. 349. According to your best recollection, what proportion of this output of 125 bales per month were Pacolet double L?

Ans. Previous to last December I should think fully three-quarters. Since that time very few under double L stamp.

Q. 350. Now, I will ask you to please ascertain what the fancy brands of the Pacolet four-yard goods were and name them to the notary.

Ans. Harold M, Vineland, Glenmore, Nyantic X, Cameron D, Montgomery Fine.

Q. 351. Do you know or did you ever know of any other four-yard brown cotton stamped with the letter M?

Ans. Yes.

Q. 352. By whom and what goods?

Ans. The Salmon Falls Manufacturing Co.

Q. 353. Are they on the market now?

Ans. I do not know.

Q. 354. When did you last know of four-yard brown cotton made by the Salmon Manufacturing Co. and stamped with the letter M being on the market?

Ans. Perhaps—I could not say definitely when I last saw it.

Q. 355. It was a good many years ago, was it not?

Ans. It was five or ten years ago. I do not know but what it is on the market now.

Q. 356. Do you know a brown cotton now on the market and stamped with the letter P?

442 Ans. I have seen the cotton, I believe, called Atlantic P.

Q. 357. Do you know the weight of it?

Ans. I do not.

Q. 358. Did you ever know of any other brown cotton marked with the letter P than that made by Atlantic Mills?

Ans. I think I have, but am not sure. I will give you the name—Portsmouth P.

Q. 359. Supposing it to be a fact that the only brown sheeting weighing four yards or about four yards to the pound and marked with the letter P, which are now in the market or ever have been in the market, were made by the Atlantic Mills; I say supposing these statements to be facts, and that in the trade using those goods these facts are known, then the letter P in that trade and to those persons would indicate brown cotton weighing four yards and made by the Atlantic Mills, would it not?

Ans. If no other letter had ever been applied to a sheeting of any kind. If the letter P had been applied to no other sheeting except to the Atlantic goods the trade would understand, in my opinion—if a person ordering P goods they would send them Atlantic P if the letter P had never been applied to any other weight of goods or any other mill's name and it had been used a long time.

Q. 360. You have said in your direct examination "Different manufacturers use different letters on standard goods." These letters are sometimes arbitrarily adopted, are they not?

Ans. They take anything they please.

Q. 361. It is also true that sometimes they adopt A and A^1 and A^2, or A, double A, or A A A, and sometimes X, X X, and X X X, just as X, X X, and X X X are used upon axes and upon tin to denote different qualities or grades of goods; is that correct?

Ans. I am not in the axe or tin business and am not able to say as to that.

Q. 362. It is, however, a fact, is it not, that in the cotton trade, speaking generally, these letters, singly or doubly or in triplicate, are used to denote different grades or qualities of goods?

Ans. Those letters indicate all grades and qualities of goods, viz., from seven-yard sheetings to a 2-50.

Q. 363. How long have you known that the four-yard goods of the Lawrence Manufacturing Co. were stamped with double L?

Ans. I should think fully ten years, perhaps fifteen, and I believe we bought the Shawmut double L before we bought the Lawrence double L.

Q. 364. Now, going back to the previous question when X, X X, and X X X are used by single manufacturer on cottons, those letters designate that X is an inferior brand, X X a better brand,

443 and X X X a still better one, or else the reverse of what I have said; is this correct?

Ans. Such is the general practice, I believe; but X is often used

on the same weight of goods that the double L is, and the same quality.

Q. 365. Now, when the Pacolet Mills were completed, at whose suggestion was it, please, that double L was adopted to indicate their four-yard goods?

Ans. That I do not know.

Q. 366. Was it at the suggestion of yourself or any member of your firm?

Ans. I often suggest a brand of goods, and also my clerk suggests a brand, and I do not know who suggested this one.

Q. 367. In and previous to February, 1884, the Lawrence Manufacturing Co. had established a wide-spread and valuable reputation for their four-yard goods which were stamped double L, had it not?

Ans. They had established a reputation of their Lawrence goods, but I place no value on letters.

Q. 368. They had established a large and valuable reputation for those particular goods which for a long time had been so stamped, had they not?

Ans. They had established a reputation, but I cannot say that it was valuable. My impression is it was not. Other double L goods with another name have brought a better price. Pacolet goods, four-yard goods, selling without any letters, are bringing a better price.

Q. 369. I am not asking now about the value, in your opinion, of the letters double L as a brand, but desire to ask simply whether at and previous to the date named this company had not established a large trade and a valuable trade reputation for these goods?

Ans. They had established a trade for these four-yard goods, I have no doubt; but as to its being valuable I cannot say.

Q. 370. Can you give me an estimate of the average output of these goods by the Lawrence Mills for any period?

Ans. I cannot.

Q. 371. Have the kindness to describe as minutely as you can what the stamp upon the Lawrence four-yard goods consists of and in what order, beginning with the top of the stamp and going to the bottom of it.

Ans. My impression is that there is a bull's head on the upper end of the piece of goods and that Lawrence—the word Lawrence—is under it about a third of the way down the piece and double L directly under that. I am not certain about this.

Q. 372. Does the stamp contain any other words?

444 Ans. I do not know.

Q. 373. Has it always had, so far as you know, the picture of a bull's head, or has it had other vignettes?

Ans. Since I have seen it, I think, but am not quite certain, with a bull on it instead of the bull's head.

Q. 374. It has always had the letters double L, has it not?

Ans. That I do not know.

Q. 375. It has, so far as you know, during the twenty years that you have known the goods, has it not?

Ans. I do not remember.

Q. 376. Do you remember of ever having seen any of these goods without the double L?

Ans. I do not.

Q. 377. Did you ever know of any cotton goods weighing about four yards and stamped with the letter M besides the goods made by the Pacolet Mills?

Ans. I did.

Q. 378. Whose were they and how were they stamped?

Ans. Stamped Salmon Falls M and Massachusetts M.

Q. 379. Supposing there were not now and never had been any four-yard sheetings stamped with the letter M other than those made by the Pacolet Mills, then the term M sheetings would mean, in the trade that was familiar with them, four-yard goods made by the Pacolet Mills, would it not?

Ans. The mills have not been long enough established, so we should know what the M meant if a letter M was called for, M cotton.

Q. 380. But what I have stated would be true, would it not, in a trade that was and for a long time had been familiar with these goods?

Ans. It would if there was no other make of goods having the letter M, and had never been used.

Q. 381. Are you or are you not aware that your mills (meaning the Pacolet) have offered to discontinue the use of double L or four-yard goods?

Ans. I have not been informed that they have offered to quit it, but I advised them to quit it, believing it had no value.

Q. 382. Have you ever bought or sold the Lawrence four-yard sheetings?

Ans. I think I have, but am not positive.

Q. 383. If you have it was comparatively for a short time and comparatively in a small amount, was it not?

Ans. We do a jobbing business of about a million dollars a year and occasionally buy. We are liable to buy almost any make
445 of cotton goods, but four-yard goods, coarse, is not a favorite weight with our trade.

SETH M. MILLIKEN.

And thereupon the further taking of testimony was adjourned to be continued for defendant at Pittsburgh, Pa., at the office of —— ——, commencing Monday morning, September 6th, 1886, at 11 a. m.

STATE OF NEW YORK, *County of N. Y.*, } *ss:*

I, Eleazer Jackson, do hereby certify that the depositions of the foregoing witnesses, Junius A. Clifton, Henry A. Coburn, E. P. Smith, and Seth M. Milliken, were taken before me by consent of the parties; and I hereby certify that the said witnesses were severally duly sworn by me and their said depositions were reduced to writing and were signed by them respectively as and for their depositions in said case.

Witness my hand and notarial seal this 3rd day of September, 1886.

[SEAL.] ELEAZER JACKSON,
Notary Public, New York County.

My fees, $5, paid by defendant.

ELEAZER JACKSON.

United States Circuit Court, District of Indiana.

LAWRENCE MANUFACTURING CO.
vs.
EVANSVILLE COTTON MANUFACTURING COMPANY.

The taking of depositions for defendant was resumed pursuant to adjournment and by consent before Weld A. Schoyer, a notary public in and for the county of Allegheny, Pa., at Pittsburgh, in said county, this 6th day of September, 1886, commencing at 11 a. m., all formalities as to notices, caption, and certificate being waived.

Present: J. S. Frazer, Esq., for defendant, and J. H. Raymond, Esq., for complainant.

J. C. STEPHENSON, being first duly sworn and being interrogated by Mr. FRAZER, testified as follows:

Q. 384. Please state your name, age, residence, and occupation.

Ans. J. G. Stephenson; Pittsburgh; dry-goods dealer; am over 40 years of age.

Q. 385. State how long you have been engaged in this business as a dry-goods merchant, and what has been your opportunities for coming in contact with brown cotton sheetings.

446 Ans. I have been in the business over twenty years as a buyer and seller of dry goods.

Q. 386. Please state whether or not it has been the custom of the trade to stamp upon brown cotton sheetings certain letters of the alphabet to indicate the grade or quality of the goods.

Ans. I believe it has.

Q. 387. Please state what has been the custom of the trade to stamp upon brown cotton sheeting to indicate the name of the manufacturer of the goods.

Ans. The name of the mill, I presume.

Q. 383. Please state whether you know in the trade a brown cotton sheeting made by the Lawrence Mill of Lowell, Massachusetts, which is stamped L L in addition to the name of the mill and other parts of the brand.

Ans. I do.

Q. 389. How are the Lawrence Mills brown cotton sheetings which are stamped L L described in the trade when written or spoken of?

Ans. As Lawrence L L.

Q. 390. Are there or not any brown cotton sheetings which are known in the trade simply by the letters "L L" without any other accompanying words of description?

Ans. There may be, but I don't know of them.

Q. 391. State what these letters "L L" indicate to the trade when stamped on Lawrence brown sheetings.

Ans. They indicate they are four-yard brown cotton.

Q. 392. State whether or not the trade gives any signification or attaches any meaning to the letters "L L" other than that given by the mill which may use them.

Ans. Not that I am aware of.

Q. 393. Should you receive an order for so many bales of "L L" brown cotton sheeting without any other words of description except the letters "L L" would you or not understand from that alone whose manufacture of goods was desired?

Ans. I would not.

Q. 394. Do you or not believe the trade place the same construction on the order as that you have just stated as your construction?

Ans. I don't know how that would be.

Q. 395. If you should receive such an order as that just indicated from a customer who had formerly bought brown cotton sheetings so stamped what construction would you then put on the order?

Ans. I would refer to his former purchases and send him duplicates.

Q. 396. If such an order came from a stranger what course would you then pursue?

447 Ans. Ascertain what he wanted.

Q. 397. State whether the same letters or combination of letters are stamped on brown cottons by all mills to indicate the same grade and weight of cottons.

Ans. I don't know that they are.

Q. 398. Is it not true that different mills stamp with letters or with a combination of letters, brown cottons to indicate different grades on weight of cloth?

Ans. They do.

Q. 399. Do you know of brown cotton sheeting which is stamped "Shawmut L L?"

Ans. I do.

Q. 400. By whom is it made?

Ans. By same mills that make the "Lawrence L L."

Q. 401. Does that command the same price in the market?

Ans. Not usually.

Q. 402. If sheetings of any particular mill are desired is it the custom of the trade to order the goods by the letters alone stamped on the goods, or is it customary to give the name of the mill in connection with the letters?

Ans. I think it is customary to give the name of the mill; should be name of the goods, not necessarily name of mill; ordering them direct from the mill it would not be necessary.

Q. 403. Are there other brown sheetings in the market which are stamped "L L" in addition to the name of the mill or the brand? If so, give some of the names.

Ans. There are a number of them; I can give their names later.

Q. 404. Are they made by other mills than the Lawrence Mills of Lowell, Mass.?

Ans. They are.

Q. 405. Is it not well understood in the trade that the goods stamped "Lawrence L L" and these goods manufactured by other mills which are stamped "L L" are made by different mills?

Ans. They are.

Cross-examination by Mr. RAYMOND:

Q. 406. Mr. Stevenson, please state the names of the other four-yard brown cottons which are stamped "L L" which you now remember.

Ans. I told him I would give him that later.

Q. 407. It will not be proper to add their names later; we must ask for an answer to the question according to your best present recollection.

Ans. There is the "Shawmut L L," which is made by the Lawrence Mill, Hoosier State L L, Amazon L L; there is quite a number of them I do not recollect just now.

448 Q. 408. Who makes the "Amazon L L?" And if it is a private brand, state whom it belongs to.

Ans. I think the brand is not private; I am not positive of the mill; if I was at my place of business I could give it to you.

Q. 409. You are in business here in Pittsburgh?

Ans. Yes, sir.

Q. 410. What four-yard brown cottons are you now handling in your trade?

Ans. We have quite a number of different brands, sir.

Q. 411. Please describe as accurately as you can the brand stamped upon the Lawrence four-yard brown cotton, giving all the contents of the stamp, and, so far as you can, the order in which it appears on the cloth, commencing with the top of the stamp and running to the bottom of it.

Ans. It would be a very indefinite answer I could give; they are not all branded alike.

Q. 412. Do you know how they differ; in what respect?

Ans. Some have a printed paper label or stamp—that is, not others.

Q. 413. The paper stamp to which you refer is to caution others against the use of the letters "L L," is it not?

Ans. I believe it is.

Q. 414. Without having reference to that paper stamp, and having sole reference to the other regular brand or brands, if they had more than one?

Ans. How is that?

Q. 415. Leaving out of consideration entirely the paper stamp, describe the balance, the other stamp, as best you can, commencing at the top and running to the bottom.

Ans. While being familiar with the goods, I could not tell exactly what that stamp is like without having a piece of the goods here.

STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

I, Weld A. Schoyer, a notary public in and for the county and State aforesaid, do hereby certify that the foregoing deposition of J. G. Stephenson was taken by the parties as aforesaid before me, by consent, this 6th day of September, 1886, and that the said deposition was signed by the said witness as and for his deposition in said cause.

Witness my hand and notarial seal this 6th day of September, A. D. 1886.

—— ——.

449 Circuit Court of the United States for the District of Indiana.
In Equity.

LAWRENCE MANUFACTURING CO.
vs.
EVANSVILLE MANUFACTURING CO.

Depositions taken at the office of Clarence E. Walker, in the city of Louisville, before Clarence E. Walker, notary public, on typewriter, by consent, in the presence of W. G. Rainey, counsel for complainant, and J. M. Dickinson, counsel for defendant, the same to be read on part of defendant. All formalities of notice, certificate, and publication are waived.

JAMES G. CARTER, a member of the wholesale dry-goods firm of Carter Bros., in Louisville, Ky., being duly sworn, deposes as follows:

Q. 416. State your age, residence, and how long you have been engaged in the dry-goods business in Louisville, and generally what has been your selling territory in such business within the last fifteen years.

Ans. My age is sixty-one years; residence, Louisville, Ky.; I have been engaged in the dry-goods business in Louisville for thirty-two years. Within the last fifteen years my selling territory has generally been Indiana, Illinois, Missouri, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, and Texas.

Q. 417. State whether or not your firm and that of Bamberger, Bloom & Co. are among the largest wholesale dry-goods firms in Louisville.

Ans. Yes.

Q. 418. State whether or not you have, off and on during the last fifteen years, handled brown cotton sheetings made by the Lawrence Manufacturing Co. stamped L L and with the picture of the bull or bull's head and the words "Lawrence Manufacturing Co." thereon.

Ans. We have.

Q. 419. State whether or not you have at any period during that time handled any other brown sheeting with the letters L L stamped thereon; and, if so, what brands.

Ans. We have handled Matthew L L sheeting; also a sheeting at Evansville, which we have under our private stamp, of Superior L L, and perhaps others, but I don't recollect now.

Q. 420. Please state, according to your understanding of the meaning attached by the trade with which you are familiar, what letters indicate upon cotton goods when stamped upon them by different manufacturers.

Objected to as incompetent and irrelevant.

450 Ans. They indicate a particular grade of the particular manufacturer who stamps them.

Q. 421. State whether or not in the trade with which you are familiar the letters L L alone, not connected with the name or brand of any particular manufacturer, have had any meaning than indicating grade or quality.

Ans. I think not.

Q. 422. If any one during this period should have asked you for L L brown cottons without adding more would you or not have understood them as meaning any special make of L L goods?

Ans. If I had been selling the party asking the question any particular brand with L L on it I would think he was asking for the same thing that he had previously had, and I would show him that goods. If, however, he had not been buying any particular make with L L on it, and only asked for L L sheeting, I would show him the make of goods with L L on it that I preferred to sell him.

Q. 423. In the case last mentioned would you understand him as designating any particular make by merely calling for L L brown sheeting.

Ans. I would not.

Cross-examination by Mr. RAINEY:

Q. 424. Since when have you handled brown sheetings stamped with L L?

Ans. I do not recollect the particular date, but perhaps eight or ten years; possibly longer.

Q. 425. Whose manufacture were they?

Ans. I could not say whose manufacture I first used under the brand L L, because I don't recollect.

Q. 426. In your answer to question 417 you have stated in substance that during the last fifteen years, "off and on," you have handled brown cotton sheetings made by the Lawrence Manufacturing Co. stamped with L L. Are we to understand that you have handled those goods as long as fifteen years?

Ans. I don't recollect that we have handled them that long. I don't recollect the first we bought. It may have been that long or a less time.

Q. 427. Have you handled any L L sheetings of this manufacture recently?

Ans. I have within twelve months.

Q. 428. How long have you handled brown cotton sheetings stamped with "Matthews" or "Superior" with L L thereon?

Ans. I have handled "Matthews" only within the last few months. "Superior L L" we have handled for several years—two or three years, or maybe four; I don't recollect.

Q. 429. By whom is the "Matthews" manufactured, and where?

451 Ans. I don't know who are the manufacturers. We buy them of Woodward, Baldwin & Norris, commission merchants of Baltimore.

Q. 430. The "Superior L L" are manufactured by the Evansville Cotton Manufacturing Co., are they not?

Ans. That is my understanding.

Q. 431. The word "Superior" is stamped thereon at your request?

Ans. Yes, sir; it is.

Q. 432. Is there anything else stamped on such sheetings besides the words "Superior" and L L?

Ans. I think it has "Superior L L sheetings." The word "sheeting" is on it, I think; that is my recollection.

Q. 433. Who buys cotton sheetings for your house and who has been your buyer during the last fifteen years?

Ans. I have.

Q. 434. During this period of time you have been familiar with the different grade and brands of brown cotton sheetings in the market?

Ans. With a good many of them I have; not all.

Q. 435. Do you take and read and have you during this fifteen years the leading dry-goods periodicals or publications?

Ans. We take some of them. I don't read a great many of them.

Q. 436. Please mention those you have taken.

Ans. We take the Dry Goods Economist and Sheldon's Price List, published in a book form. The Dry Goods Economist we have taken for thirty years; the other, perhaps, for ten years.

Q. 437. During the past ten or twelve years you have known of the reputation in the trade of L L sheeting manufactured by the Lawrence Manufacturing Co.?

Ans. I think so.

Q. 438. Previous to your handling the "Matthews" and "Superior" L L did you ever handle any other goods branded with L L except the Lawrence?

Ans. I can't recollect whether I have or not. I can't keep in mind all the brands of sheeting that I have handled for the last ten or twelve years.

Q. 439. Should a customer to whom you had been selling L L sheeting stamped with "Superior" have ordered from you or asked you to show him L L sheeting before you handled the "Matthews" would you not have shown him at once or sent him your "Superior L L?"

Ans. That question has been answered. I would.

Q. 440. Before you commenced handling the "Superior L L" should one speak to you about L L sheeting you would have understood him to have referred to the Lawrence goods, would you not?

452 Ans. If I had never handled anything but Lawrence L L sheeting up to that time and had no knowledge of any other L L sheeting except the Lawrence L L I would think that he referred to them.

Q. 441. You have stated in answer to question 419 that you understand that in the trade with which you are familiar letters indicate when stamped on cotton goods particular grades of the particular manufacturer who stamped them; you do not wish to be understood as saying that this is invariably the case?

Ans. I think it is invariably.

Q. 442. Will you undertake to say that letters when stamped on cotton goods have no other meaning to the trade than simply the particular grade of the particular manufacturer who uses such letters?

Ans. If they have any other meaning I don't know it.

Q. 443. There may be instances where letters do have other meaning, so far as you know, may they not?

Ans. If they have any other meaning than I have stated I am not aware of it.

Q. 444. Please mention the names of other dry-goods jobbing houses at Louisville who deal in coarse brown cotton sheeting besides your house and Bamberger, Bloom & Co.

Ans. John M. Robinson & Co. and J. Bacon & Sons job some goods. There is another firm—D. McCulloch & Sons. There was another firm, but they failed.

Q. 445. Into what part of Illinois does your trade extend?

Ans. The southern part.

Q. 446. How is it as to Indiana?

Ans. The southern part of the State.

JAMES G. CARTER.

In this cause Levi Bloom, having by consent of both parties read the foregoing deposition of James G. Carter, adopts the same on direct and cross-examination as his deposition, with the exception that he is a partner of the firm of Bamberger, Bloom & Co., wholesale dry-goods merchants of Louisville, and has been in such firm about nine years, and also with the exception that he has not handled "Superior" or "Matthews L L" sheeting, but has handled "Lawrence" and "Graniteville," and that by substituting "Graniteville" in the deposition of Mr. Carter where "Matthews" and "Superior" occur the effect of his cross-examination would be the same. His firm has taken the Economist and Sheldon's Price List for a number of years, and also other publications not mentioned in Mr. Carter's deposition.

LEVI BLOOM.

453 STATE OF KENTUCKY, } ss:
County of Jefferson, }

I, Clarence E. Walker, a notary public in and for the county and State aforesaid, certify that the deposition of the foregoing witnesses were taken by me in the presence of the witnesses, the witnesses

having been first sworn by me, and the depositions read over by them and signed in my presence.

Witness my hand this 7th day of October, 1886.

CLARENCE E. WALKER,
Notary Public, Jefferson County, Ky.

United States Circuit Court, District of Indiana. In Chancery.

LAWRENCE MANUFACTURING CO.
vs.
EVANSVILLE COTTON MANUFACTURING CO.

And in other cases, as per stipulation.

Testimony taken on behalf of the defendant, by consent of the parties, before John T. Kennerk, Esq., a notary public in and for the county of Suffolk, in the State of Massachusetts, at Boston, this 24th day of September, 1886, all objections as to notices for and as to the time and place of taking said testimony and as to the caption and certificate being hereby waived.

Present: Mr. J. S. Frazer, for defendant, and Mr. J. H. Raymond, for complainant.

LUCIUS M. SARGENT, being duly sworn and interrogated by Mr. FRAZER, on behalf of the defendant, testified as follows:

Q. 446. Please state your name, residence, and what connection you have with the Lawrence Manufacturing Company, complainant in this case, and how long you have had this connection.

Ans. My name is Lucius M. Sargent; residence, Boston; am treasurer of the Lawrence Manufacturing Company. I became treasurer Feb. 7, 1880.

Q. 447. Please state when the change was made in the stamp in your four-yard brown cotton sheeting from a bull rampant to a bull's head.

Ans. In April, 1883.

Q. 448. Please state when your company first began to label its four-yard brown cotton sheeting with a caution label as to the use of the letters double L.

Ans. During the first week of March, 1886.

Q. 449. What are the words of this caution label, and how is the label attached to the sheeting? If you have a copy of this caution label, please attach it to this deposition, marked Exhibit No. 1.

454 Ans. I don't remember the words. The label is pasted on each piece of goods in a conspicuous place.

Q. 450. Please state how many grades of cotton or canton flannel your company make, and how they are distinguished, one from the other.

Ans. The number of grades varies from time to time. We make at present about eight. They are distinguished from each other by letters of the alphabet.

Q. 451. Please give me some of those letters.

Ans. To start with, A X; as the flannels grow heavier we mark them A A, A A A; as the flannels grow lighter we mark them A, B, C, &c.

Q. 452. State how many grades of denims your company make; and if letters are used to distinguish the different grades of these goods, please give some of these letters.

Ans. We make three grades at present, distinguished from each other by numbers.

Q. 453. If your company formerly used letters to distinguish the different grades of denims made by you, please state when they ceased to use them and substituted numbers.

Ans. I believe we never used letters.

Q. 454. Please state whether or not it is a fact that your company pasted on both denims and cotton flannels the picture of a bull's head similar in design to that which you have stamped on your four-yard brown sheeting?

Objection.—Question objected to as immaterial and irrelevant, and this objection is reserved as to all questions and answers concerning the subject-matter of this question.

Ans. We have pasted pictures of bull's heads on both denims and cotton flannels, first quality. I cannot say whether the design is similar to that stamp on four-yard sheeting.

Q. 455. Would you do me the favor to attach to your deposition, and mark them Exhibits No. 2 and 3, these tickets or labels which are pasted on your denims and cotton flannels?

Ans. I will.

Q. 456. Please state if this picture of a bull's head is either pasted or stamped upon any of the seconds of your manufacture—that is, goods of second quality.

Ans. It is not.

Q. 457. How many kinds of cotton goods does your mill make? I do not refer to grades, but different kinds of cotton cloth?

Ans. Sheetings, drills, denims, cotton flannels.

Q. 458. Please state whether or not the Lawrence Manufacturing Company, in August, 1884, or any part of the year 1884, made, for John V. Farwell & Co., of Chicago, one hundred and
455 fifty bales of brown cotton sheeting and stamped it Albany L L.

Ans. We did, in October, 1884.

Q. 459. By whom was this stamp, Albany L L, furnished to you and what became of it after the use you have indicated?

Ans. It was furnished by John V. Farwell & Co. to stamp this lot of goods and was returned to them after use.

Cross-examination by Mr. RAYMOND:

Q. 460. Referring to your testimony concerning the progressive use of the first letters *at* the alphabet to indicate the grade, it is also true, is it not, that you use the last letters of the alphabet or some of them in the same manner and for the same purposes?

Ans. We do.

Q. 461. If you know that other mills make the same use of the first or last letters of the alphabet, please name one of them.

Ans. The Amoskeag Manufacturing Company so use the first letter, to my knowledge.

Q. 462. It is true, is it not, that you make and sell one kind of denim upon which you use as a trade name the word Germania, and without an imprint of the bull or the bull's head?

Ans. My impression is we use the word Shawmut upon denims of second quality without any imprint of the bull or the bull's head.

Q. 463. It is true, is it not, that you use the word Germania, as stated, upon one of your flannels?

Ans. We do.

Q. 464. Please furnish for an exhibit to this deposition one of the said tickets and mark it Sargent Exhibit A.

Ans. I will.

Q. 465. And please produce as many different samples of the bull's head ticket as you have.

Ans. I will.

Q. 466. I understand that your mill is one of the largest, if not the largest, hosiery mill in the world, and that you do not stamp any of your hosiery with the bull or the bull's head; am I correct?

Ans. You are, to the best of my knowledge. We do not use the mill stamp. We use altogether a private stamp on our hosiery.

Q. 467. Am I right in saying that "Albany L L" was placed, as you have testified, at the request of John V. Farwell & Co., and that the goods so stamped were your regular double L goods?

Ans. You are, so far as I know.

Q. 468. When did you begin the manufacture of denims?

Ans. In the spring of 1884.

Q. 469. Did you print and use the cautionary stamp referred to after having taken and under the advice of counsel?

Ans. I did.

456 Redirect examination by Mr. FRAZER:

Q. 470. To cross-question 460 and answer you said that the last letters of the alphabet are used for the purpose of indicating the grade of goods. Now, please state what the letters X X and X X X indicate when stamped upon your brown cotton sheeting, if they are so stamped.

Ans. They indicate different weights of the same sheeting.

Q. 471. What weight of cotton goods are they stamped upon?

Ans. X X is stamped on 3-20 goods, X X X on 2.90 goods.

Q. 472. They are stamped on these goods to indicate the grade or weight of the goods, are they not?

Ans. They are to indicate certain weights of our sheeting.

Q. 473. Weight and grade in this connection mean the same thing, do they not?

Ans. I consider weight and grade distinct. Grades depend on other things than weight.

Q. 474. Does your mill make any other brown sheetings except those which are stamped X X, X X X, and L L? If so, please name them.

Ans. We make no others.

LUCIUS M. SARGENTS.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Subscribed and sworn to before me this 24th day of Sept. 1886.

[SEAL.] JOHN T. KENNERK,
Notary Public.

J. T. Kennerk's fees as examiner, $10; paid by defendant Sept. 27th, 1886.

JOHN T. KENNERK,
Notary Public.

United States Circuit Court, District of Indiana. In Chancery.

LAWRENCE MANUFACTURING CO.
vs.
EVANSVILLE COTTON MANUFACTURING COMPANY.

It is stipulated by and between the parties as follows:

First. Five pamphlets being, weekly publications of J. D. Sheldon & Co., of New York, and of said series numbers 458, 682, 730, 787, and 887, dated, respectively, August 2, 1877, November 16, 1881, October 18, 1882, November 20, 1883, and October 21, 1885, are introduced as defendant's exhibits and respectively marked Sheldon's Exhibits 1, 2, 3, 4, and 5.

Second. That from time to time the Lawrence Manufacturing Co. or its duly authorized agent, with different words and different disposition of the words and different pictures, have published advertisements with vignette of a bull's head at the top, samples of which are found at page 86 of Exhibit "O'Bryan, D," attached to the deposition of witness O'Bryan, and heretofore introduced as evidence in the case of the Lawrence Manufacturing Co. *vs.* Tennessee Manufacturing Co.; also to be found in said Sheldon's price list, at page 96 of number 887, at page 36 of number 787, at page 20 of number 730, and at page 40 of number 682, and at page 54 of number 458.

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Third. That upon canton flannels heretofore and now manufactured and in the market the following stamps indicate respectively the following weights:

Of the Nashua flannels, letter A, 3.20; B, 3.45; C, 3.70; D, 3.95; E, 4.40; F F, 4.93; G G, 5.16; X, 2.70; L X, 2.50; X L, 2.35; X X, 2.20; X X L, 2; X X X, 1.85; X X X X, 1.60.

Of the Tremont and Suffolk flannels, X, 2.50; X X, 2.25; X X X, 2.

Other flannels of the Tremont and Suffolk manufacture are marked A, N, O, and R.

Of the Ellerton flannels, A, 2.20; B, 2.50; C, 2.70; D, 3; E, 3.20; F, 3.40; G, 4.

That of brown sheeting goods are stamped as follows and represent the following weights:

Hyde Park sheetings, X, X X, X X X. Dwight X, 4.81; Y, 4,38; Z, 3.90.

Fourth. A sample of the head piece heretofore used by the Lawrence Manufacturing Co. on its X X sheetings is introduced and marked "Lawrence Exhibit X X Head Piece."

At the bottom of said exhibit occur the words "From Townsend & Yale, New York, Boston, Philadelphia, and Chicago." Those words have been placed upon said goods since Messrs. Townsend & Yale became the selling agents for the Lawrence Manufacturing Co., viz., February, 1886, but the said head piece represents in all other respects accurately the head piece used upon said goods by the said Lawrence mill prior and up to the commencement of this suit; further, that the sample herewith marked "Lawrence Exhibit X X Second Head Piece," represents the head piece used by complainant on said X X brown cotton sheetings since the month of May, 1886.

New York, Sept. 25, 1886.

J. H. RAYMOND,
For Complainant.
JAS. S. FRAZER,
For Defendant.

458 Circuit Court of the United States for the District of Indiana.

LAWRENCE MANUFACTURING CO.
vs.
EVANSVILLE COTTON MANUFACTURING CO.

The depositions of witnesses produced, sworn, and examined in behalf of the defendant in the above-entitled cause, at the law office of D. C. Givens, 102 First street, Evansville, Ind., on the 6th day of Dec., 1886, by agreement; all exceptions not noted waived.

Present: W. G. Rainey, for complainant, and D. C. Givens, for defendant.

All forms of caption and certificate, commission, &c., waived and taken under stipulation heretofore entered into, and this proof is to be left with defendant and by it filed, all forms as to filing being waived.

E. B. MORGAN, being first duly sworn, deposes and says as follows:

Q. 475. State your name, age, residence, and occupation, your business relations with the defendant, and its extent as to time.

Ans. E. B. Morgan; I am 42 years old; I am a dry-goods merchant; am a partner in the firm of Mackey, Nisbet & Co., Evansville, Ind. I am secretary and treasurer of the Evansville Cotton Manufacturing Co.; Mackey, Nisbet & Co. are the selling agents of

the Evansville Cotton Manufacturing Co. I have been secretary and treasurer of the Evansville Cotton Manufacturing Co. about ten years. The Evansville Cotton Manufacturing Co.'s mills are in Evansville, Indiana.

Q. 476. State what business the Evansville Cotton Manufacturing Co. is engaged in and how long a time it has been in business.

Ans. My recollection of it is they began in 1872 or '73. They are engaged in manufacturing sheeting and drillings.

Q. 477. Please state what regular brands the defendant manufactures of sheetings, the name of said brand, and how many grades of each brand.

Objected to by complainant as incompetent, irrelevant, and immaterial.

Ans. Crescent City and Hoosier State; they are the regular brands; they make five of these particular brands.

Q. 478. Please state how you indicate the different grades of Crescent City and Hoosier State sheetings.

Same objection.

—. By letters of the alphabet.

Q. 479. Please state what letters you use to indicate brands.

459 Same objection.

Ans. Usually A, B, C, and L L; those letters each indicate a different grade of Crescent City and Hoosier State.

Q. 480. Please describe the brand Hoosier State sheeting manufactured by the Evansville Cotton Mills.

Same objection.

Ans. The words Hoosier State in a semi circle around the coat of arms of the State of Indiana, the word sheetings underneath.

Q. 481. Please state the difference in the different grades of Hoosier State as shown by the stamp on the goods.

Same objection.

Question withdrawn.

Q. 482. Describe the brand on the Crescent City.

Same objection.

Ans. The words Crescent City in a semicircle, the word mills underneath, with a crescent below and sheetings below that.

Q. 483. Please state how long you have used that brand of Crescent City and what was used previous to that brand as described.

Same objection.

Ans. The Crescent City brand has been used since the starting of the mills. The one used before the one just described was "Crescent City Mills" in a semicircle and Evansville, Indiana, in an inverted circle below, forming a circle crescent around the trademark, representing industry, commerce, and agriculture, described

by cog-wheels, ship, and sheave of wheat, a cut of Justice sitting on three wheels, representing medals awarded at St. Louis Centennial and Atlanta. The words above justice, "awarded gold medals" and under justice, "Evansville Manufacturing Co." That stamp was discontinued by being worn out in use.

Q. 484. Please state for what purpose the letters L L are used on the Crescent City and Hoosier State brands.

Same objection.

Ans. To designate the character of goods and weight of goods.

Q. 485. State what weight is meant to be denoted.

Ans. Meant to denote four-yard goods.

Q. 486. For what purpose do you use the letters A, B, C, and D on the Crescent City and Hoosier State brands?

Same objection.

Ans. To designate weight. A represents standard or 2.85
460 yards to the pound, B represents 3 yards to the pound, C represents 3.25 yards to the pound, D represents 3.50 yards to the pound.

Q. 487. Please state the custom of manufacturers of sheetings as to the use of letters of the alphabet on sheetings and the purpose for which they are used.

Same objection, and, further, because it is not sure that the witness knows its custom and purpose.

Ans. They use the letters of the alphabet to designate the different grades of goods.

Q. 488. Do you know the custom of manufacturers in using letters of the alphabet and the purpose for which they are used?

Same objection as first above.

Ans. I know the custom; I do know it to be the custom.

Q. 489. Please state what it is.

Same objection.

Ans. They use the letters of the alphabet to designate the different grades of goods of their manufacture.

Q. 490. Please state to what extent and how general this custom is.

Same objection.

Ans. I think it is the custom among all mills making several different grades of goods.

Q. 491. State, if you know, how well known and what is the reputation of the Crescent City and Hoosier State brands of sheeting manufactured by the defendant in the trade.

Same objection.

Ans. I think they are very well known and have the reputation of being as good as any sheeting made.

Q. 492. State if the trade generally knows by whom the aforesaid-named brands of sheeting are manufactured.

Same objection.

Ans. I think they generally do.

Q. 493. State whether or not or to what extent the letters L L are used by different manufacturers to indicate grade or quality of their sheetings.

Same objection.

Ans. It is a pretty general custom to designate 4-yard goods, counting 56.60, designated by the letters L L.

Q. 494. State if in using the letters of the alphabet, and among them L L, on sheetings defendant had any intention of simulating the brand or trade-mark of any other manufacturer.

461 Same objection.

Ans. They did not.

Q. 495. State if defendant has ever sold its sheetings marked with the letters "L L" as goods manufactured by the complainant.

Ans. They have not.

Cross-examination by Mr. RAINEY:

Q. 496. Since you have been connected with defendant company as secretary and treasurer who has been the principal business manager for defendant company?

Ans. D. J. Mackey for the first few years and myself for the last few years.

Q. 497. Before your connection with defendant company how long was it in existence and manufacturing sheeting?

Ans. Three or four years.

Q. 498. How long have you been its secretary and treasurer?

Ans. About ten years.

Q. 409. When did it commence to brand L L on its sheeting?

Ans. Seven years ago.

Q. 500. Do you know who first suggested the use of "L L" on its four-yard sheetings?

Ans. I do not.

Q. 501. Who was the superintendent of the mill at that time?

Ans. I think it was W. W. Cumnock, now at Henderson, Ky.

Q. 502. In what business is he engaged in at Henderson?

Ans. He is superintendent of the Henderson Cotton Mill.

Q. 503. How long was he with the defendant company before you first adopted the use of L L on its four-yard sheetings?

Ans. Upon examination I see that W. W. Cumnock was not superintendent, but J. H. Polsdorfer was, when the defendant company adopted L L on its four-yard sheeting. Polsdorfer was with the company from the beginning.

Q. 504. Whose business was it to adopt or change the different brands used on your sheetings?

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Ans. They have not.

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Ans. I think it was W. W. Cumnock, now at Henderson, Ky.

Q. 502. In what business is he engaged in at Henderson?

Ans. He is superintendent of the Henderson Cotton Mill.

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Ans. Upon examination I see that W. W. Cumnock was not superintendent, but J. H. Polsdorfer was, when the defendant company adopted L L on its four-yard sheeting. Polsdorfer was with the company from the beginning.

Q. 504. Whose business was it to adopt or change the different brands used on your sheetings?

Ans. It was done by Mackey, Nisbet & Co., its selling agents.

Q. 505. How long have you known of L L sheetings made by the Lawrence Manufacturing Company?

Ans. I cannot answer that; ten or twelve years, I presume.

Q. 506. Is it not true that since the defendant company commenced to brand its four-yard sheetings with L L that it has branded such goods with private brands of its customers?

Ans. Yes.

Q. 507. Please mention the names of all such private brands and for whom they were made.

462 Ans. I will give you the names, but prefer not to give the customers for whom they are branded because they prefer not to be known. We make Lancaster L L, Binghampton L L, Indiana L L, Missouri Valley L L, Adirondack L L, Hyde Park L L, Minneapolis L L. There are others we have branded a few for, but I can't recall them. I remember Kaw River L L and Wabash L L.

Q. 508. When stamping your four-yard goods with such private brands is there anything on them to indicate for whom they are made?

Ans. No, sir.

Q. 509. Is there anything on such goods to indicate they were made by defendant company?

Ans. There is not.

Q. 510. Who composed the firm of Mackey, Nisbet & Co. ten years ago?

Ans. D. J. Mackey, W. F. Nisbet, and myself.

Q. 511. Who compose such firm at the present time, or, rather, at the time this suit was brought?

Ans. The same parties, and have been no change in the meantime.

Q. 512. Do you know why your customers prefer not to have it known what their private brand on L L sheeting is?

Ans. I don't know their motives. I don't know that they generally do care. I had one or two incidents in my mind that do.

Q. 513. What reasons were given you in such cases why they did not desire it known?

Ans. They did not want their competitors to know where it came from.

Q. 514. Did it have any reference to competition in L L sheetings made by other manufacturers?

Ans. Not that I am aware of.

Q. 515. What is your best impression on this subject?

Same objection.

Ans. I haven't any impression. I don't know the object.

Q. 516. At the time Mackey, Nisbet & Co. adopted the use of L L on its four-yard sheetings did they not know that such sheetings would be put into the trade in competition with the L L sheetings made by the Lawrence Manufacturing Co.?

Ans. I presume they did.

Q. 517. Is it not true that ever since you adopted L L on your four-yard sheetings such goods have been in the trade in competition with L L sheetings made by the Lawrence Manufacturing Co.?

Ans. The same competition with the Lawrence that they have with every other make.

Q. 518. This is true with your regular brands as well as with the private brands which you have stamped, is it not?

Ans. It is.

463 Q. 519. How long has the defendant company been stamping its L L sheetings with private brands?

Ans. Ever since we made them, the same that was on our other grades.

Q. 521. Before you commenced branding your four-yard sheetings with L L how were they branded to distinguish them from other grades of goods you made?

Ans. We never made any four-yard sheeting until we commenced branding L L.

Q. 521. That was about seven years ago?

Ans. Yes, sir.

Q. 522. At that time did you know of any other L L sheeting besides those made by the Lawrence Manufacturing Co. that weighed four yards to the pound?

Ans. We did.

Q. 523. What L L?

Ans. The Badger State L L's. We sold them in our stock before we commenced making L L.

Q. 524. Did you know of any other four-yard L L?

Ans. I do not remember any other now.

Q. 525. Is it not true that the sheetings stamped with L L in the trade are known as L L's, and as such are distinguished from other grades of sheeting marked with letters A, B, C, &c.?

Ans. Yes; the grades of the goods are distinguished by the letters.

Q. 526. L L represents in the trade four-yard sheeting, does it not?

Ans. Yes, sir.

Q. 527. What does A represent in trade?

Ans. Standard sheeting; 2.85 usually.

Q. 528. Do you mean that outside of your own manufacture the trade would understand an A sheeting to mean a 2.85 sheeting?

Ans. Not in all cases.

Q. 529. Do you know of any other 2.85 sheeting besides your own, in the trade, branded A?

Ans. I do.

Q. 530. Whose make?

Ans. The Atlantic Mills and Indian Head.

Q. 531. Do you know of your own knowledge that the Atlantic Mills make a standard sheeting of 2.85 yards to the pound, branded A?

Ans. I hav'n't weighed any or noticed any for a long time, as we don't handle them.

Q. 532. Same question as to Indian Head.

Ans. Same answer.

Q. 533. Do you know of any three-yard sheetings in the trade branded B besides your own?

464 Ans. I don't call any to mind at present.

Q. 534. Do you know any 3.25 yard branded with C besides your own?

Ans. I don't remember any just at present.

Q. 535. Or any 3.50 yards branded D besides your own?

Ans. I don't remember any just at present.

Q. 536. Then the selection and use by the defendant company of the letters B, C, and D were without significance, except that they designated your 3, 3.25, and 3.50 yard goods?

Ans. Yes; when used on our goods.

Q. 537. How has the defendant company folded its L L sheetings?

Ans. They are folded in yard folds and then doubled over, making the folds when ready for trade 18 inches wide.

Q. 538. To that extent they were similar in appearance to the L L sheetings made by the Lawrence Manufacturing Co., are they not?

Ans. They are similar to the Lawrence and every other company, for that is the customary way of folding heavy goods.

Q. 539. Is it not true that the defendant company stamps the letters L L on its goods below the other letters of the stamp and separated from any other letters?

Ans. It is altogether according to the character of the stamp; they are put on to make a symmetrical appearance—sometimes in the center and sometimes at the bottom.

Q. 540. But in each instance the letters L L are alone and disconnected in any horizontal line from any other letters?

Ans. Yes, sir; they are.

Q. 541. Is it not true that since the defendant company commenced making four-yard sheetings it has branded the same with the letters L L?

Ans. It has.

Q. 542. In fixing the price at which the defendant company sells its L L sheeting has it been governed in any way by the market price of L L made by the Lawrence Manufacturing Co.?

Ans. Not any more by the Lawrence L L than by any other.

Q. 543. Is it not true that your company have frequently shipped its L L sheetings to its customers on memorandum, the price of the same to be fixed in the future by the market price of the Lawrence L L?

Ans. It is not.

Q. 544. Has your company ever done this?

Ans. I think it was done in one instance only.

Q. 545. Is it not true that at the beginning of your manufacture of your L L sheeting that your company was enabled to put same into the market the more readily because they were stamped with L L?

Ans. I don't know that it was.

465 Q. 546. Will you say that it was not?

Ans. I don't know that I would.

Q. 547. Being familiar with the dry-goods trade and coming into contact with it as secretary and treasurer of this defendant company, would you not think that a new company commencing now to manufacture four-yard sheetings could the more readily put them into the market by stamping the same with L L than if they were to use some other brand?

Objected to.

Ans. I doubt if it would, owing to the competition, as there are a great many objections to stamping goods L L.

Q. 548. How would you have answered the above question confining it to the time that you commenced using L L?

Ans. I can't say as to that.

Q. 549. Don't you think that at the time your company commenced to stamp its four-yard sheetings with L L it derived a benefit therefrom in the trade?

Ans. In some cases I presume it did.

Q. 550. And is it not true that from that time up to the present the use of L L on its four-yard sheetings has been a benefit to your company?

Ans. It may have been, but I think we could have placed the goods equally as well without the use of the L L.

Q. 551. Now, will you please tell us why it is your company continues and persists in the use of the L L on all its four-yard sheetings, since there are a great "many objections in stamping them with L L" on them, and since, in your opinion, you "could have placed the goods equally as well without the use of the L L?"

Ans. Because we commenced them years ago and the goods became popular and we never saw any necessity of making any change.

E. B. MORGAN.

Subscribed and sworn to before me this 6th day of December, 1886.

WILL. W. READ,
Notary Public.

Adjourned at 5.30 to meet at 9.30, Dec. 6.

DEC. 6.

Resumed taking at 9.30.

JOHN E. HUBBS, being produced, sworn, and examined, deposes as follows:

Q. 552. State your name, age, occupation, and residence.

Ans. John E. Hubbs; I am 34 years old; I am traveling salesman; Evansville, Indiana, is my home. I travel for Mackey, Nisbet & Co.; travel in Southern Illinois, south of the O. & M. road; I sell dry goods and notions to country merchants. I have traveled about 15 years for Mackey, Nisbet & Co.

466 Q. 553. State if you are acquainted with the understanding of the trade as to how the different grades of sheeting made by the manufacturers are indicated.

Ans. That being a leading staple, I am.

Q. 554. State what that understanding is.

Ans. In speaking of sheetings we determine what a man wants by the weight of them. For instance, a standard sheeting weighs 2.85, the next about 3 yards to the pound, and the next grade about 3.25, next about 4, and the five sheeting; in our line of sheetings, as well as in some others, the weight is denoted by letters of the alphabet.

Q. 555. State if you know any grade of sheeting upon which is stamped, in connection with other words and devices the, letters L L. If so, please state what the said letters L L are understood to mean.

Ans. Yes; there is a great many—the Badger State, Hoosier State, Lawrence, Beaver Dam, and quite a number of others; it represents four-yard goods.

Q. 556. Please state if the letters L L where stamped on sheetings in connection with other words are understood to represent the goods made by any particular mill or manufacturer, or the grade.

Ans. No, sir; represent no manufacturer.

Cross-examined by Mr. RAINEY:

Q. 557. How many different classes of cotton goods do you handle for Mackey, Nisbet & Co.? You may confine your answer to white cotton goods.

Ans. There are three or more sheetings, drills, cotton flannels.

Q. 558. How are these several classes of goods lettered?

Ans. They are lettered with letters of the alphabet, to denote their quality and weight.

Q. 559. Give us instances in each class of the letters and what weight they indicate.

Ans. In our sheetings the letter A denotes 2.86 weight; B, 3; C, 3.25, and L L, 4. In drilling I don't know the weight, in A they are heavier weight and C lighter weight. In cotton flannels we handle line branded D, H, F, C, and E, &c., each letter denoting weight of goods. We have A and B, different letters denoting different weight. I cannot give the weights.

Q. 560. Should one of your customers order from you a given number of pieces of L L goods what would you understand him to mean?

Ans. Any L L we happen to have in stock.

Q. 561. What L L have you had in stock since you have been on the road?

467 Ans. We have had Hoosier State, Pacolet L L, Lawrence, Indiana, Michigan, Garden City, and Crescent City.

Q. 562. Would you not understand that he wanted a coarse brown sheeting weighing four yards to the pound?

Ans. Yes, sir.

Q. 563. Then your answer to my second previous question above would be that should a customer ask you for L L you would understand him to mean a coarse brown sheeting weighing four yards to the pound and branded by one of the brands you have above men-

tioned, or some other sheeting of the same weight and branded with L L; is that correct?

Ans. Without his specially specifying some particular brand of L L, I would.

Q. 564. What is the usual custom among your trade in ordering such sheetings?

Ans. In such cases they specify a brand they prefer, while in others they are indifferent to what they get.

Q. 565. Did you not state a few moments ago that it was not one time in fifty cases that the customer specifies any particular L L, but simply orders so many pieces of L L?

Objected to.

Ans. I did; but on second thought it is hardly as many cases as that.

Q. 566. Is it not true, however, that in the majority of cases the order is simply for so many pieces of L L?

Ans. My trade I sell quite often, and they know the goods I carry; they simply say L L.

Q. 567. This has been true ever since you have been on the road selling such goods, has it not?

Ans. Yes, sir.

Q. 568. Suppose a customer should order of you in writing so many pieces of A goods, what would you understand him to mean?

Ans. Standard sheeting.

Q. 569. Necessarily sheetings?

Ans. Without specifying any particular line of goods I would suppose he would mean sheetings.

Q. 570. Suppose he would order so many pieces of B goods, what would you then understand him to mean?

Ans. Would not thoroughly understand the order, but would suppose he meant heavy-grade sheeting.

Q. 571. Suppose he was to order so many pieces of C goods, what would you then understand him to mean?

Ans. Would not thoroughly understand the order, but would suppose he would mean medium sheeting.

Q. 572. You have stated above that you have in stock
468 sheetings, drillings, and cotton flannels each marked with A and C, and cotton flannels and sheetings marked B. Now, should a customer order so many pieces of either A, B, or C goods, could you say certainly that he meant necessarily sheetings or cotton flannels or drillings in the absence of anything specified what class of goods he wanted?

Ans. I could not, but on account of the greater sales of sheetings would suppose he meant sheetings.

Q. 573. How long have you been selling L L sheetings?

Ans. I could not state, but as long as I can recollect.

Q. 574. To what trade do you sell?

Ans. Southern Illinois trade.

Q. 575. Do you sell to the jobber or to the retail merchant?

Ans. Retail.

Q. 576. In ordering goods from you does the retail trade know the weight of the same by the letters?

Ans. It depends upon the kind of merchant. Some cross-road trade know that A is a good grade, and that B is cheaper, but they don't know exact weight, while a good merchant is posted about the grade of each brand.

Q. 577. Is it not true that but few merchants know what a cotton flannel weighs?

Ans. Yes, sir.

Q. 578. Same question repeated as to other grades of cotton flannels.

Ans. In cotton flannels they are not uniform in width, and a man is not supposed to be so well acquainted with their weight, because they are not so staple, and pay a better profit.

Q. 579. When your customers order from you L L sheetings how have you filled his orders?

Ans. Any L L we happen to have in stock.

JOHN E. HUBB.

Subscribed and sworn to.

W. W. READ,
Notary Public.

Dec. 7th.—Adjourned till one o'clock.

Dec. 7.—Resumed taking depositions.

JACOB KUHN, being produced, sworn, and examined, deposes as follows:

Q. 580. State your name, age, residence, and occupation, and how long so engaged.

Ans. Jacob Kuhn; I am 43 years old; Evansville, Ind.; I am general salesman for Mackey, Nisbet & Co. I have been with them 21 years, in dry-goods house.

Q. 581. State if you are familiar with brown sheetings.

Ans. I am.

469 Q. 582. State if you are acquainted with the understanding of the trade as to how different grades or sheetings made by manufacturers are designated.

Ans. Yes, sir.

Q. 583. Please state how different grades of Crescent City sheetings are indicated.

Objected to as incompetent and immaterial.

Ans. They are denoted by different letters—A, B, C, &c.

Q. 584. What is the understanding of the trade as to the meaning of the letters L L when stamped on sheetings, in connection with the other words and marks?

Same objection.

Ans. To denote the style of goods just as the other styles of goods.

Q. 585. State whether or not such use of the letters L L has any reference to the manufacturer of sheetings.

Ans. No, sir; it is merely to denote a certain quality of the mill's make whose brand is stamped on them.

Cross-examined by Mr. RAINEY:

Q. 586. How long have you known in the trade L L sheetings?

Ans. I can't state exactly; have known them for several years; I couldn't state how long.

Q 587. About how long? State as near as you can.

Ans. About eight or ten years.

Q. 588. During the past ten years what do you understand the trade to mean when speaking of L L goods?

Ans. Well, I don't think there is anything meant particularly; my understanding is a mill will put a certain letter on their goods to denote their quality.

Q. 589. When you hear L L spoken of or mentioned what do you think of?

Ans. L L is on a great many things. Unless they would mention the name and letters I would not know what they meant.

Q. 590. Would you think of a horse; if not, what would you think of?

Ans. I wouldn't know what to think of. There are a great many goods branded in letters. I would not think of a horse.

Q. 591. Would you think of goods; and, if so, what kind of goods; whether silks, satins, or what?

Ans. I would not know what to think, unless goods were described.

Q. 592. Would you not think of cotton goods?

Ans. Not necessarily.

470 Q. 593. Will you swear that when you hear L L spoken of with reference to goods that you do not think of cotton goods?

Ans. I would not necessarily think of that. There is a great many goods branded L L—such as knit socks, cotton flannels.

Q. 594. What other goods are branded with L L besides these you have mentioned?

Ans. I couldn't say positively we brand anything with L L.

Q. 595. Did you ever see any goods branded with L L? And, if so, please enumerate them.

Ans. I've seen sheeting branded L L. I've seen whiskey branded L L; that's all.

Q. 596. Then, when you hear L L mentioned by a customer, or should a customer come into your store and ask if you have any L L, do you think of whiskey or sheetings?

Ans. I would think of sheetings, because we deal in them, and that is my business.

Q. 597. What kind of sheetings do you think of when you hear L L mentioned?

Objected to.

Ans. I would think of the kind we have in stock; if there is more than one brand I would ask the man what brand he wants.

Q. 598. Would you not think of a coarse brown sheeting weighing four yards to the pound?

Ans. Not necessarily.

Q. 599. How long have you been selling for Mackey, Nisbet & Co. four-yard sheetings branded with L L?

Ans. Eight or ten years; maybe longer; I can't exactly tell.

Q. 600. How long have you known L L sheetings made by the Lawrence Manufacturing Co.?

Ans. About eight or ten years, as near as I can remember.

Q. 601. This house has kept L L sheetings made by the Lawrence Manufacturing Co., has it not?

Ans. Yes, sir.

Q. 602. Is it not true that the house of Mackey, Nisbet & Co. very often gets orders from its customers simply for so many pieces of L L?

Ans. I don't remember of any.

Q. 603. Do not your customers inquire of such goods or price the same by asking about L L?

Ans. As a general thing they ask the price of Hoosier L L in our store.

Q. 604. Have you never heard such goods spoken of by anybody as L L simply without the word Hoosier or Crescent City or Lawrence or some such word?

Ans. I don't remember that I have.

471 Q. 605. What department of Mackey, Nisbet & Co. do you have special charge of, if any?

Ans. I haven't any particular department; am just general salesman.

Q. 606. Now will you swear during the past ten years or more, during which time this house has handled and sold L L sheetings, that you never heard any one speak of the same, whether customer or connected with the store, simply as L L, or L L sheetings?

Ans. In speaking among the clerks in the store they sometimes mention L L sheetings, as Hoosier L L is the only one we have had in the house for some time. I don't know that I ever heard a customer speak of L L sheeting.

Q. 607. During the past ten years, every time a customer would speak to you about such goods, have you noticed particularly whether he used the word Lawrence or Hoosier or some such word?

Ans. Ten years is a long time to think of that; a person don't pay much attention to that part of it. I have not noticed particularly whether he used the word Lawrence or Hoosier or any such name.

Q. 608. Why do you keep in stock L L sheetings made by the Lawrence Co.?

Ans. We do not keep it.

Q. 609. Since when have you ceased to keep it?

Ans. I couldn't say positively; I would say about a year or more.

Q. 610. Why did you keep such goods in stock up to a year or more ago?

Ans. That is a hard question to answer. For the same reason we keep other goods in the house.

Redirect examination by D. C. GIVENS:

Q. 611. Has it not been longer than a year or more since Lawrence L L was kept in stock?

Ans. My answer was a year or more; it may have been five years or more.

JACOB KUHN.

Subscribed and sworn to before me—

WILL. W. READ,
Notary Public.

The further taking of depositions is hereby adjourned until 9 o'clock a. m., Dec. 8th, 1886.

W. W. READ,
Notary Public.

472 The further taking of depositions is adjourned until Friday, Dec. 10th, 1886.

W. W. READ,
Notary Public.

The deposition of JOHN S. HOPKINS, produced, sworn, and examined, *deposeth* as follows:

Q. 612. State your name, age, residence, and occupation, and how long so engaged.

Ans. John S. Hopkins; I live in Evansville; I am 43 years old; I am in the retail dry-goods business, in the firm of Hopkins Bros.; have been in business twenty years.

Q. 613. State whether or not during your experience in the dry-goods business you have ever handled brown sheetings.

Ans. Yes, sir.

Q. 614. Please state the understanding in the trade as to the use and meaning of letters of the alphabet when stamped on sheetings in connection with the other words or brand.

Objected to as incompetent, immaterial, and because witness has not shown knowledge.

Ans. I suppose the letters signify quality of goods, as to weight and quality.

Cross-examined by Mr. RAINEY, attorney for complainant:

Q. 615. What does the letter B mean in the dry-goods business?

Ans. Well, take a certain brand of muslins, I would know what it meant. If I was ordering a bale of sheetings from Mackey, Nisbet & Co., and ordered a bale of Crescent City B, I would know that wasn't standard sheeting.

Q. 616. What weight of goods does the letter C mean?

Ans. Well, taking the same line of goods, it would mean lighter grade of goods.

Q. 617. Does it mean to you any specific weight of goods?

Ans. Would not. These goods I know the grade would be about 3 and $\frac{15}{100}$ yards to the pound.

Q. 618. Do your retail customers understand the weight of goods and quality B means when spoken of as sheetings?

Ans. Not as a general thing. Some of them are familiar with them.

Q. 619. That is true as to all letters, is it not?

Ans. Yes, sir.

Redirect examination by Mr. GIVENS:

Q. 620. State how long you have known in the trade of the Atlantic L L.

473 Objected to as not proper examination and as incompetent and immaterial.

Ans. I cannot state just how long I have known them.

Q. 621. State as near as you can.

Objected to as incompetent, immaterial, and not proper redirect examination.

Ans. I guess about sixteen years; that long.

J. S. HOPKINS.

Subscribed and sworn to this the — day of December, 1886.

WILL. W. READ,
Notary Public.

Further taking of depositions is adjourned until 9 o'clock, Monday morning, December 13th, at St. Louis, Mo.

ST. LOUIS, MO., *Dec.* 13.

Met pursuant to adjournment from Evansville, Indiana, and taking of depositions resumed.

M. D. DODDS, being produced, sworn, and examined, deposes as follows:

Q. 622. State your name, age, residence, and occupation, and how long engaged.

Ans. M. D. Dood; age, 42; city of St. Louis; wholesale dry-goods business for twenty-one years. I have been engaged in the dry-goods business at St. Louis; was formerly a member of Dood, Brown & Co., and am now engaged by the firm of Brown, Daughaday & Co.

Q. 623. State what experience you have had in handling brown sheeting.

Ans. I have handled brown sheeting constantly from the time that I entered the dry-goods business, always representing that branch of the business.

Q. 624. State the custom or usage of cotton mills making different grades of brown sheeting, as to the manner of how they stamped said sheetings for the purpose of indicating its different grades.

Objected to as incompetent and immaterial, and, further, because the witness has not qualified himself on this point.

Ans. All mills manufacturing cotton goods, brown cotton sheeting especially, with very few exceptions, manufacture a number of grades representing quality, weight, and width, and in order to distinguish their different grades they brand a name on the surface of each bolt, the name usually representing the mill and the letter or number placed thereon representing the quality, grade, or width, so that in ordering goods from a mill we distinguish the grade wanted by the number or letter.

474 Q. 625. State whether or not there are many mills using the same letters of the alphabet upon sheetings; if there are many mills or not using the letters L L.

Same objection.

Ans. There are a number of mills in this country that use the different letters of the alphabet and many mills that use the letters L L.

Q. 626. State the meaning or significance of the letters L L when found stamped upon brown sheeting.

Ans. With us the letters L L placed upon brown sheeting represents a certain quality and weight and are termed by the trade four-yard sheeting.

Q. 627. State whether or not the letters L L when found stamped upon brown sheeting have any reference to the manufactory—I mean any particular manufactory.

Ans. With us it has not, unless the name is represented with the letters. We frequently have orders sent to us by our customers calling for L L sheeting. We understand from the order that they want a sheeting a yard wide, of a certain weight and quality, and we use our discretion what to send them. If we have a sheeting with the letters L L branded thereon we send them of any make that we choose; if not, we frequently send in place a sheeting without the L L branded of the same weight and quality.

Cross-examination:

Q. 628. How long have you been handling L L sheeting?

Ans. I think from the time that I first entered the dry-goods business. At that time I remember two manufacturers using the letters L L—the Atlantic Mills and the Lawrence Mills. There might have been other mills at that time, but I cannot now recall them, and during the past twenty years a large number of mills throughout the country have used the letters L L on sheetings.

Q. 629. Is it not true that you understand the trade significance of L L to mean four-yard sheeting?

Ans. It means a four-yard sheeting, or thereabouts.

Q. 630. Do you not understand that the Atlantic L L are a five-yard sheeting?

Ans. I don't remember now. My impression was that they were a little heavier than the five-yard sheeting. We have not used them for a number of years; at least eight or ten years since we have bought any Atlantic L L; it might not be as long as that.

Q. 631. To what extent did your house handle Atlantic L L as compared with L L made by the Lawrence Manufacturing Co.?

Ans. We at one time handled them quite largely and would probably buy as many of them at one time as of the Law-
475 rence, but as a whole have handled more of the Lawrence than of the Atlantic.

Q. 632. Is it not true that during the last fifteen years you have understood the trade significance of L L to mean four-yard sheeting?

Ans. I think for the last fifteen years we would consider the letters L L to represent four-yard sheeting or thereabout.

Q. 633. Is it not also true that before you have handled any other four-yard goods than the Lawrence branded with L L, that should a customer speak of L L sheeting you would have understood him to have referred to the Lawrence L L?

Ans. Not necessarily so. At that time we were using the Atlantic. We would consider the propriety of sending either make.

Q. 634. The Atlantic L L were never known to the trade as four-yard goods?

Ans. They were approaching that. They were a class of goods that could be identified with four-yard goods.

Q. 635. Don't you know that they were always quoted and sold by your house and purchased at a different price in the market than the Lawrence L L?

Ans. They always cost a little less. At the same time we would have some customers that could use them in their business to take the place of an L L of a little heavier make.

Q. 636. Is it not true that by reason of its being a lighter goods the price of the Atlantic L L was lower than those of the Lawrence L L?

Ans. They would cost a little less on account of the weight being different.

Q. 637. What capacity did you serve when a member of the firm of Dodd, Brown & Co.?

Ans. Always sold more or less goods, and at times bought goods. Dodd, Brown & Co. changed to Brown, Daughaday & Co. in 1885, at which time I ceased to be a member of the firm, and am now employed by the firm of Brown, Dooerghty & Co. as selling goods, and, to a certain extent, looking after certain branches of their business.

Q. 638. Should a customer at the present time make an order on the old firm for L L sheeting what would you send him?

Ans. We would send him a four-yard sheeting with the letters L L branded thereon of any make that we thought would be the most satisfactory to our customer, and at the same time suiting our

convenience as to the quantity of the goods we hold and the profit we gain in the sale.

476 Q. 639. How long has this been true that you would fill such an order in this manner?

Ans. Since the time that we have had the use of sheetings branded L L, where there were more than one make in the market.

Q. 640. What L L sheetings were handled by the firm of Dodd, Brown & Co. up to the time that it changed to Brown, Dooerghty & Co.?

Ans. We used, as far as I can recollect, the Lawrence L L, Badger State L L, Meginniss L L, Aurora L L, Hoosier State L L, Indian Standard L L. There are one or two brands that I cannot now recall. The present house use about the same L L since the dissolution of the old firm.

Q. 641. Is it not true that each of these L L's come into competition in the trade with one another?

Ans. Yes.

Q. 642. Has either of your firm ever had any private brands of L L; if so, by what manufacturer was it made?

Ans. We have a brand of L L sheeting named Indian Standard, manufactured for us by the firm of Mackey, Nisbet & Co., agent for the Evansville Cotton Manufacturing Co.

Q. 643. Is there anything on the Indian Standard L L to indicate for whom they were made or by what manufactory?

Ans. There is not.

Q. 644. Why is it that your firm has its L L sheetings or some of them branded with private brands?

—. We have them branded with a private brand for different reasons. When we can get hold of what we consider a good thing we place in our stock, that we can handle to good advantage. We like to introduce such an article under our own ticket so that our customers will become familiar with the goods as belonging to us, and then we have no competition with other houses for the same.

Q. 645. Is it any advantage to have such sheetings branded with double L L; if so, what?

Ans. In some instances I think that there is some advantage, from the fact the trade is familiar with the letters L L as representing a certain quality of sheeting—that is, I mean four-yard sheeting.

Q. 646. Is it not true that all L L sheeting, or I should say all four-yard sheetings, partake of this same advantage in the trade by reason of the fact they are branded with double L L?

Ans. Not altogether so. We have some mills that manufacture four-yard sheetings without using the letters L L that are very popular, and are probably sold as freely as any sheeting with the letters L L branded on them.

477 Q. 647. Can you mention here any such four-yard goods and give their brands?

Ans. The Hoosier sheeting is sold very largely in this market, as also the Enterprise, both four-yard sheeting, and, if anything, are quite as popular as any sheeting.

Q. 648. Is it not true of both firms you have been connected with

have handled to a very large extent L L sheeting made by the Lawrence manufactory?

Ans. We have at times—sometimes large and sometimes less.

Q. 649. Is it not true that in your trade before you had handled Badger State or the other double L L mentioned by you that the L L made by the Lawrence Manufacturing Co. had become very popular and well-known?

Ans. The Lawrence double L L sheeting have been well-known and popular with the trade.

Q. 650. Has either of your houses ever showed any double L L sheetings in preference to the Lawrence when having the Lawrence in stock?

Ans. We have a large number of customers that buy and prefer other L L in preference to the Lawrence. Then again we have some customers that want the Lawrence L L sheeting.

Q. 651. Do you always know what particular double L L is wanted by your customer when he orders so many pieces of L L sheeting?

Ans. We do not always know; we take it for granted that they leave it for us to send such as we have in the stock that we think will be suitable for their sales.

Q. 652. Is it not true that in such cases you send the Indian Standard L L or some other four-yard sheeting branded L L that you can sell to the best advantage?

Ans. That is not true; we very frequently send Lawrence L L; in fact, I think we send the Lawrence L L quite as frequently as any other make.

Q. 653. Did the firm of Dodd, Brown & Co. ever show any preference for four-yard goods branded with L L over those made by the Lawrence Manufacturing Co.; and, if so, in what way was it done?

Ans. We have at times, when we could make more money on other L L besides Lawrence, have shown the preference over the Lawrence by having our men who travel in the country and otherwise work on these goods; that is true as to the present firm also; also, I can't say positive.

Q. 654. Did either of your firms ever show such preference over the Lawrence goods by keeping its double L L from the view
478 of a customer who might come into the store and exposing other L L on the table?

Ans. I cannot say that we have taken them from our stock at any time to show preference for other goods, but we have at times, when we have had a short supply of them, taken them from sale in order to hold them for such customers that may want the Lawrence double L L sheeting.

Redirect examination:

Q. 655. State whether or not you have your brand Indian Standards placed on other grades of sheeting besides the four yards.

Ans. We use the name Indian Standard on all grades of sheeting.

M. D. DODD.

Subscribed and sworn to before me this 13th day of December, A. D. 1886.

JOSEPH McGINNIS,
Notary Public.

A. R. SMITH, being produced, sworn, and examined, deposes as follows:

Q. 656. State your name, age, residence, and occupation, and how long engaged.

Ans. A. R. Smith; age, 33; city of St. Louis; wholesale dry goods; I am engaged 18 years; at present I have charge of the domestic department of Brown, Daughaday & Co.; about five years in charge of that department.

Q. 657. State if you have handled brown sheetings upon which were stamped the letters double L L; if so, please state what the trade significance of said letters double L L is.

Ans. Yes; I have handled brown sheeting—bought and sold them stamped double L L. The general understanding is, I understand, it means a thirty-six-inch unbleached cotton weighing four yards to the pound and counting about 56 picks to the square inch.

A. R. SMITH.

Subscribed and sworn to before me this 13th day of December, A. D. 1886.

JOSEPH E. McGINNIS,
Notary Public.

JOHN BUCHANAN, being produced, sworn, and examined, deposes as follows:

Q. 658. State your name, age, residence, occupation, and how long so engaged.

Ans. John Buchanan; sixty years old; city of St. Louis;
479 dry-goods merchant. I have been engaged in the dry-goods business 47 years. I was 12 years in the city of Buffalo, N. Y., and the balance in St. Louis.

Q. 659. State in what States your business extended.

Ans. In Illinois, Iowa, Missouri, Kansas, Kentucky, Arkansas, Texas, Indian Territory, New Mexico, Nebraska.

Q. 660. Since you have been in business in the dry-goods business to what extent have you handled and become acquainted with brown sheetings?

Ans. I have handled a great many hundred bales of almost all kinds of sheeting. For the first few years they were mostly Eastern sheetings; latterly they have been mostly Southern.

Q. 661. Please state the understanding in the trade as to the manner and how cotton mills brand their sheeting for the purpose of indicating the manufacture and how to indicate the trade or quality.

Objected to as incompetent and immaterial; and, further, because

the witness has not shown himself competent to answer the question.

Ans. A brand on the goods, as, for instance, Pacific or Atlantic, or any other brand, would designate the mill by which they were made. Letters A. P. D. C. or any other letter on the goods would designate the weight and quality.

Q. 662. State whether or not many cotton mills use the same letters of the alphabet upon their goods and to what extent the letters L L are used by different cotton mills upon their sheeting?

Same objection.

Ans. There are several mills that use the same letters to designate the quality, including the letters L L.

Q. 663. State the accepted meaning in the trade of the letters L L when found stamped upon sheeting.

Ans. If simply means a four-yard sheeting in weight and ought to count 5656.

Q. 664. State whether or not the letters L L, when found stamped upon sheeting, indicate to the trade that said sheetings are the product of any particular mill.

Ans. I don't think it is.

Q. 665. State how the trade make use of the brand or name on sheeting and the letters stamped thereon in making orders for sheetings.

Same objection.

Ans. If I should receive an order for a double L L sheeting I should understand that the party making the order wanted a four-yard sheeting. A good many years ago I should have understood that they wanted an Atlantic L L weighing about 420 to 425.

480 Q. 666. State whether or not it is a custom for customers in ordering to name both the brand and letter.

Same objection.

Ans. I should say as a rule it was.

Q. 667. State how long you have known in the trade the Atlantic L L sheeting.

Ans. That is a question I cannot possibly answer, but it was before I knew any other L L.

Q. 668. State whether or not you have ever handled any brown sheetings upon which were stamped the letters L L.

Ans. I have handled quantities of it.

Cross-examination:

Q. 669. Did not Mr. Givens, solicitor for the defendant, The Evansville Cotton Manufacturing Co., read to you, before you were examined, a letter having reference to the understanding in the trade of the meaning of letters when branded on sheeting, or something to that effect?

Ans. He did not, sir.

Q. 670. Since when have you been in St. Louis?

Ans. I have been in St. Louis since the 17th day of April, 1850?

Q. 671. What is the name of your firm?

Ans. My firm at present is J. Buchanan. I am in this firm about four years; now commission business. I was with the firm of Pomeroy & Benton, dry-goods jobbers, the latter part of 1863; I was with that house two years as salesman. I was then with the firm of W. H. Benton for one year; they were jobbers. I was with W. H. Benton & Co. and a partner in the house for three years; was buyer and salesman. I was with the firm of Chassing & Cabbott about 14 years; buyer and salesman; jobbing-house business.

Q. 672. How long have you handled four-yard goods branded with L L?

Ans. I would not like to say positively how long, but I think I have handled some ever since I have been in the jobbing business.

Q. 673. For how long have you been in the jobbing business?

Ans. Twenty years.

Q. 674. Give the name of the first four-yard sheeting branded with L L that you have sold.

Ans. I could not give you the first four-yard sheeting that I ever sold with L L on, but the first L L sheeting I sold was Atlantic. I don't think it weighed quite four yards.

Q. 675. How long have you handled and sold L L sheeting made by the Lawrence Manufacturing Co.?

Ans. I think the first lot of Lawrence L L I purchased at
481 Richardson & Co. was for the house of Wm. A. Benton & Co.; about fifteen or sixteen years ago.

Q. 676. From that time up to the present you have known and handled to a greater or less extent L L sheetings made by the Lawrence Manufacturing Co.?

Ans. Not up to the present time, but up to four or five years ago. I have not handled L L since I quitted the jobbing business.

Q. 677. To you and the trade with which you have been familiar, is it not true that L L sheetings manufactured by the Lawrence Manufacturing Co. has been understood to mean a four-yard brown sheeting?

Ans. Any sheeting with an L L on it means a four-yard sheeting. It designates the weight.

Q. 678. That has been the understanding in the trade with which you are familiar for the last fifteen years, has it not?

Ans. I would not say that the Atlantic Mills sold a sheeting which did not weigh four yards. Since they quit making L L all other sheetings designated with the L L have been four-yard sheetings.

Q. 679. Then, if I understand you, L L in the trade means four-yard sheeting, and has been ever since you have handled the L L made by the Lawrence Manufacturing Co.; do I understand you correctly?

Ans. Since the Atlantics made an L L sheeting all other sheetings designated with L L mean four-yard sheeting.

Q. 680. Then at any time since any other L L besides the Atlantic

have been in the market, should any one order of you an L L sheeting you would have understood it to mean a four-yard sheeting would you not?

Ans. I would.

Q. 681. What other four-yard L L sheeting besides the Lawrence have you handled and sold before you quit the jobbing business?

Ans. The Adirondack. There are several brands I cannot call to mind, but I know I have sold many brands of L L sheeting. I have a very poor memory as to names.

Q. 682. Before you ever handled any four-yard sheetings branded with L L, except those made by the Lawrence Manufacturing Co., should a customer have ordered from you a L L sheeting, would you not have understood him to have referred to the Lawrence L L?

Objected to.

Ans. Not at all. I should have put in Lawrence or Atlantic—whichever I had in the stock.

Q. 683. You have already stated that you would have understood such an order to call for four-yard sheeting, and that to
482 be the general significance in the trade, and you have also stated that the Atlantic L L's are not a four-yard sheeting. Now, will you please to explain why you have filled such an order with either the Atlantic or Lawrence, understanding it to mean four-yard goods, and knowing that the Atlantic were not four-yard goods?

Ans. As long as the Atlantic sheetings made an L L the letters did not signify the weight. After the Atlantic ceased to make a double L, and the Lawrence L L indicated a four-yard sheeting, I would have filled the order with Lawrence L L. Previous to that with either brand, Atlantic or Lawrence.

Q. 684. Then if I understand you correctly you mean that at any time after L L obtained the significance in the trade of four yards to the pound had you received an order for L L sheeting you would have understood it to mean and call for and would have filled it with Lawrence L L?

Ans. If there had been no four-yard sheeting in the market branded L L but the Lawrence I would have filled the order with Lawrence L L. If there were other brands with L L I would have put in the one I made the most profit on.

Q. 685. You mean that so long as the Lawrence L L was the only four-yard sheeting in the trade you would have understood such an order to have referred to Lawrence L L?

Ans. Of course, if there was but one sheeting in the trade I would have referred to that.

Q. 686. Last question repeated.

Ans. Of course, if there is but one brand of L L sheeting I would have put that in.

Q. 687. You mean if the Lawrence L L were the only 4-yard goods in the market you would understand such an order to refer to Lawrence goods, do you not?

Ans. Why, certainly; if there is but one brand you must give that.

Q. 688. From the time, then, that the L L sheetings made by the Lawrence Mill became the only four-yard goods in the trade up to the time that other manufacturers branded their four-yard goods with L L you and the trade with which you are familiar understood L L to refer to the Lawrence; is that correct?

Ans. We understood it to refer to four-yard sheeting; nothing else.

Q. 689. Did you not understand it, then, to mean four-yard sheeting made by the Lawrence Mill?

Ans. We simply understood it to mean a four-yard sheeting.

Q. 690. The previous questions are based upon the hypothesis that there was in the trade but one brand of four-yard goods with L L on it; that made by the Lawrence Manufacturing Co. With this understanding how would you answer?

483 Ans. I would answer this, that when a party ordered a Lawrence L L sheeting we would put him in a Lawrence L L. If he ordered simply a double L L sheeting we would put him in any four-yard sheeting we had in the house.

Q. 691. Would you put him in a four-yard sheeting that was not branded with L L?

Ans. Certainly; any four-yard sheeting we had in stock.

Q. 692. If you had in stock an L L sheeting made by the Lawrence Manufacturing Co. and were to receive an order for simply L L sheetings and had no other sheetings branded with L L in stock, but did have other four-yard sheeting, would you not have filled such an order with the Lawrence goods?

Ans. Sometimes when Lawrence goods were being sold at a loss and other four-yard goods at no loss we would have filled it with the other goods.

Q. 693. At the time that you handled other L L sheetings besides the Lawrence, and should one have spoken to you about L L sheetings, would you not have thought of the Lawrence goods?

Objected to.

Ans. It would depend altogether who the customer was. We sold more outside L L than we did Lawrence L L, and at a great many times we never would sell Lawrence L L unless compelled to do it, as we generally lost money on it.

Q. 694. Why were you ever compelled to sell the Lawrence L L?

Ans. We never were compelled to sell them.

Q. 695. What do you mean, then, by your last answer?

Ans. I take that back. We were never compelled to sell it. I will now explain what I mean.

What I mean was this, that once in awhile a customer would come in who would have nothing but a Lawrence L L. We could sell him at the price or pass the customer, which we often did. We often refused to sell them.

Q. 696. Is it not true that after other manufacturers began to brand their four-yard sheeting with double L L that such sheetings were put into the market in competition with the Lawrence L L?

Ans. No more competition than there were before on four-yard goods. They were in competition before they were branded L L.

Q. 697. You have repeatedly evaded rather than answered my questions. I do not know whether you do it intentionally or not. I desire the last question repeated to you and suggest that you answer it categorically if you can, and then make such explanation as you think fit.

484 Ans. No more competition than there were before on four-yard goods. They were in competition before they were branded L L. In regard to evading his questions I have tried to the very best of my ability to give a clear and concise answer to every question that has been asked me by either side.

Q. 698. While you were in the jobbing business did you ever attempt to sell L L sheetings made by other manufacturers than the Lawrence Manufacturing Co. in preference to the Lawrence L L?

Ans. It all depended upon the profit we made on the goods. When we made more profit on the Lawrence we pushed them; when we made more on other brands we threw the Lawrence out and pushed the brands we made the most money on, regardless of who made them.

Q. 699. Is it not a fact that the Lawrence L L were the most popular four-yard goods in the trade while you were in the jobbing business?

Ans. For some time they were.

Q. 700. Since when have you handled and sold a four-yard sheeting branded with L L besides those made by the Lawrence Manufacturing Co.?

Ans. That I could not tell. I don't know when these other people commenced making L L.

Q. 701. Did you ever, while you were in the jobbing business, receive any orders simply for so many pieces of L L sheeting?

Ans. That is a question I could not answer.

Q. 702. Then all your previous testimony on the subject as to how you would have filled such an order is based upon an hypothesis of facts that never existed. Is that correct?

Ans. It is not correct. I would not swear positively to the receipt of an order for L L without a brand, but my strong impression is that the house received hundreds of them seven or eight years ago—between this and seven years ago.

Q. 703. Then, if you cannot say positively that you personally never received such an order, how can you state at this day that if you had received such an order fifteen or twenty years ago, when the Atlantic L L were being made and the Lawrence also, that you would have filled it with either Atlantics or Lawrences?

Ans. Because fifteen or twenty years ago sheetings were not sold on weight as they are now, and if we had Atlantic or Lawrence in the store and the party had ordered simply L L we would have put in either which we had in stock.

Q. 704. But you have just stated that you do not know that you ever received such an order personally. This being so, how can

you now state how you would have filled such an order had you received it?

485 Ans. I said that I would not positively swear that I ever had received such an order, because it would be impossible for me to give the date of it or the parties from whom I received it; so I decline to swear to the fact.

Q. 705. By what manufacturer were the Adirondack L L made?

Ans. I cannot answer.

Q. 706. Can you tell when you handled such L L?

Ans. I think we handled those goods about six or seven years ago.

Q. 707. For how long did you handle that particular brand?

Ans. Three or four years, until Chase & Cabbot went out of business.

Q. 708. With whom have you talked about the case before you were sworn?

Ans. I talked a few minutes with Mr. Scunier, of Scunier, White & Co., dry-goods commission merchants.

Q. 709. What did he say to you?

Ans. He asked me if I were willing to come over and be a witness in this case. I told him I was if it would not take too long. That was all we said.

Q. 710. Did he not tell you the nature of the controversy?

Ans. He told me it was about the Lawrence L L. I knew what that was myself.

J. BUCHANAN.

Subscribed and sworn to before me this 13th day of December, A. D. 1886.

JOSEPH E. McGINNIS,
Notary Public.

N. B. DAY, being produced, sworn, and examined, deposes as follows:

Q. 711. State your name, age, residence, occupation, and how long so engaged.

Ans. N. B. Day; city of St. Louis; dry goods, and buyer of the domestics for the wholesale dry-goods house of H. T. Simon, Gregory & Co., city of St. Louis, for ten years.

Q. 712. State in what territory the firm of H. T. Simon, Gregory & Co. sell goods.

Ans. Missouri, Illinois, Iowa, Nebraska, Kansas, Arkansas, Texas, Indian Territory, Tennessee, Kentucky, and Indiana.

Q. 713. State if you are acquainted with the understanding of the trade as to the manner cotton mills stamp sheetings for the purpose of indicating a manufacture and the grades.

Ans. I am.

486 Q. 714. Please state the understanding in the trade as to the use of names and letters upon brown sheetings.

Objected to as incompetent and irrelevant.

Ans. They use, ordinarily, manufacturers' or mills' names to designate the product of that mill; the latter to indicate the various qualities or grades.

Q. 715. State whether or not the letters of the alphabet are extensively used for that purpose.

Same objection.

Ans. They are.

Q. 716. State whether or not the letters L L are used by many mills for this purpose, and if, when used, refer to any particular manufacturer.

Same objection.

Ans. Yes; are used by a great many mills, and do not necessarily have reference to any make, but refer to the quality—more usually the weight.

Q. 717. State what sheetings your house handled stamped with L L.

Ans. The Peerless L L, Palmersola L L, Hermitage L L, Adirondack L L, Aurora L L, Gregory L L, Beaver Dam L L; have handled Graniteville L L, Pacolet L L, Forest City L L, Atlantic L L, Hoosier State L L.

Q. 718. State how the trade usually orders sheeting.

Ans. Ordinarily by name and letter.

Q. 719. On an open order for sheetings stamped L L what would you understand it to mean?

Ans. Any L L we had in stock and saw fit to put in. In other words, any of a number of so stamped goods, the product of any mill that we regularly carry.

Cross-examination:

Q. 720. How long have you been familiar with L L sheetings?

Ans. So long as I have been — the dry-goods business—for ten years.

Q. 721. What L L did you handle ten years ago?

Ans. That query I could not answer. I do not remember the various brands.

Q. 722. Did you at that time handle many brands with L L on them?

Ans. We were not at that time handling any cottons, but bought them on the streets, of our neighbors, to fill orders as sent in, being what is known as a fancy-goods house at that time.

Q. 723. Since when have you ceased to be a fancy-goods house?

Ans. Since July of 1882.

487 Q. 724. Previous to that time you did not carry in stock any sheetings at all?

Ans. No.

Q. 725. What were your special duties prior to July, 1882?

Ans. Street buyer.

Q. 726. What have been your duties since July, 1882?

Ans. Buyer and head of the domestic and staple department.

Q. 727. Do you have anything to do with the selling of such goods?

Ans. Yes.

Q. 728. From whom do you buy L L sheetings?

Ans. From various manufacturers—Nashville Cotton Mills, Aurora Cotton Mills, Beaver Dam Cotton Mills, Pacolet, the Chattenango and Mackey-Nisbet Cotton Mills, Atlantic Cotton Mills.

Q. 729. Where are the Peerless L L made, and by whom?

Ans. By Nashville Cotton Mills; that is our private brand.

Q. 730. The Nashville Cotton Mills stamp these sheetings L L under orders from you, do they not?

Ans. Yes.

Q. 731. Where are the Palmatola L L, Hermitage L L, Adirondack L L, Gregory L L, and Forest City L L made, respectively?

Ans. The first two are made by the Nashville Cotton Mills, Adirondack by the Evansville Cotton Mills; Gregory are sold us by A. Jones, commission merchant, St. Louis; Forest City L L by Frederick, Victor & Achilles. I don't know where they are made; I think they are made in Chettenango, N. Y.

Q. 732. The Gregory L L is also a private brand of yours, is it not, and ordered by you, who is the agent?

Ans. Yes.

Q. 733. Occasionally these several sheetings are spoken of by your customers as L L sheeting, are they not?

Ans. Yes.

Q. 734. When you hear them spoken of in this manner or get an order for L L sheetings you understand what it means?

Ans. Yes.

Q. 735. State whether or not such goods are popular in the trade.

Ans. All L L sheetings are.

Q. 736. Do you purchase such L L directly from the manufacturer or through agents at St. Louis?

Ans. Ordinarily through agents located at St. Louis or elsewhere.

Q. 737. Is there not a benefit by having L L stamped on sheeting?

Ans. Yes.

Q. 738. And is it not true that you have Peerless L L and Gregory L L specially branded for your house, in order to avail yourself in the trade of this benefit?

Objected to.

488 Ans. Yes; with more particular reference for having a brand, or which they are obliged to come to us to buy.

Q. 739. Please explain in detail what you mean by the last answer.

Ans. Why, obviously a brand or make of goods which we by advertising and pushing introduce to the trade, which brand we control, thereby bringing customers to our house for said brand, and the general benefit derived from presence of such trade in our house and stocks.

Q. 740. Is it not true that the trade throughout the States reached

by your house is familiar with the general popularity and reputation of L L sheeting?

Objected to.

Ans. Yes.

Q. 741. And is it not also true that, realizing this fact and in order to attract to your house as much of the trade in L L as you can, that you handle and advertise to the trade such goods?

Ans. We only advertise and desire to sell such goods that is L L as may promote the sales of other and more profitable stuffs.

Q. 742. My previous question is in substance whether you do not handle the L L, on account of their reputation and popularity in the trade, for the purpose of attracting customers to your house?

Ans. We handle them more for convenience, at a recognized designation for a four-yard cotton.

Mr. Givens says it is a very good answer to the question.

Counsel for complainant protests against the counsel for defendant making any suggestions or expressing any opinion of the nature above expressed.

That the counsel for defense protests against the previous counsel's promiscuous kicking.

Q. 743. Is it not true that you sell L L sheetings either at a loss or at a smaller margin of profit than you do in handling other brands of cotton goods?

Ans. Yes; more than the majority of cotton goods.

Q. 744. And yet by reason of their great popularity and the demand in the trade for L L sheeting you find it a necessity to keeping them in stock, do you not?

Objected to.

Ans. Not a necessity, but a benefit.

Q. 745. And one of the benefits derived by your house is to attract customers, is it not?

Objected to.

Ans. Yes; by proper selling of same.

Q. 746. Have you ever handled the L L sheetings made by the Lawrence Manufacturing Co.?

Ans. Yes.

489 Q. 747. To what extent as compared to the quantity of other L L?

Ans. That I could not tell without reference to books.

Q. 748. Give us your best impression at this time.

Ans. I should say about 30 or 35 per cent. of our total sale of four-yard cotton.

Q. 749. Do you make as much profit in your sales of L L made by the Lawrence Manufacturing Co. as upon your other L L?

Ans. This fall, yes; ordinarily, no.

Q. 750. Is it not true that up to recently you have sold them at a loss as a rule?

Ans. We have flattered ourselves that we have come out whole on them in the past.

Q. 751. Is it not true that your house has pushed in the trade other L L in preference to the Lawrence?

Ans. Yes; for reasons here and heretofore explained.

Q. 752. And is it not also true that were it not for the demands of the trade you would not keep in stock the L L sheetings made by the Lawrence Manufacturing Co.?

Objected to.

Ans. We would keep no goods in stock for which there was no demand or sale.

Q. 753. Has your house ever kept from its counters the Lawrence L L and exposed in preference other L L?

Objected to.

Ans. Yes.

Redirect:

Q. 754. Do you want to make any explanation of your last question?

"Mr. Rainey," the counsel for complainant, says that after the question as above dictated the counsel for defendant said to the scribe in the hearing of the witness: "Now read the last question and answer to him and let us see if he understands it;" and counsel for complainant requested the notary before whom the depositions are being taken to have the record show the above, but the notary declined so to do.

Ans. We endeavored to push in every way such goods in all lines as we control the brand of, to the exclusion, as far as possible, of regular mill brands, thereby securing a better hold on our own trade.

N. B. DAY.

Subscribed and sworn to before me this 13th day of December, 1886.

JOSEPH E. McGINNIS,
Notary Public.

490 J. L. BOOGHER, being produced, sworn, and examined, deposes as follows:

Q. 755. State your name, age, residence, occupation, and how long so engaged.

Ans. J. L. Boogher; 50 years; city of St. Louis; dry-goods jobber of J. H. Ware, Boogher & Co., city of St. Louis; selling goods for 32 years and 9 months in St. Louis.

Q. 756. State in what territory your house does business.

Ans. Illinois, Iowa, Missouri, Kentucky, Tennessee, Mississippi, Arkansas, Louisiana, Texas, Indian Territory, and Kansas, New Mexico, Idaho, Colorado, and some other Territories.

Q. 757. Please state if you are acquainted with the understanding of the trade as to the meaning of words and letters when found stamped upon brown sheeting.

Objected to as incompetent and immaterial.

Ans. There are various kinds of brown sheetings. There are usually what we call standard goods—three-yard goods, four-yard goods, five-yard goods, and some lighter. Standard goods are usually branded A; that is goods well known to the trade. The B goods are lighter weight, the C goods still lighter. The four-yard goods are branded L L, the five-yard goods C, and, as a rule, other goods lighter than these have various names.

Q. 758. State whether or not you have ever handled brown sheetings upon which were stamped the letters L L. If so, state what and the meaning of said letters to the trade.

Ans. We have handled Hermitage L L, Lawrence L L, Hoosier State L L, Badger State L L, and now Badger State double L. It means four-yard goods—Atlantic L L.

Q. 759. Do or not letters of the alphabet when found stamped upon sheeting indicate to the trade the manufacturer or the grade?

Same objection, and as leading.

Ans. As a rule, they indicate the weight and generally the grade, and the reason of that is, specifically, many houses put their own name on them, with L L, when the manufacturer is not known to them as to whose goods they are.

Q. 760. How long have you known and handled the Atlantic L L?

Objected to as incompetent and immaterial.

Ans. Well, I could not say how many years. My recollection of the Atlantic L L is older than any other L L.

Cross-examination:

Q. 761. Since when have you ceased to handle the Atlantic L L?

Ans. Not many years; a few years ago.

491 Q. 762. To what extent have you handled Atlantic L L?

Ans. Sometimes pretty largely, years ago.

Q. 763. You know it as a five-yard sheeting, do you not?

Ans. No, sir; I know no L L except 4-yard sheeting.

Q. 764. Then, so long as you have known such goods, to you and to your trade L L has meant a four-yard goods. Is that correct?

Ans. It has.

Q. 765. When did you first begin to handle L L sheeting made by the Lawrence Manufacturing Co.?

Ans. I cannot answer that question precisely; a good many years ago.

Q. 766. As long ago as fifteen years?

Ans. I could not give any specific answer. It may have been 15 or twenty years ago; probably not so long. We have not handled them so largely until the last few years.

Q. 767. When you hear L L sheeting mentioned what significance does it carry to your mind?

Ans. The weight of four yards.

Q. 768. Is that all you think of?

Ans. Yes.

Q. 769. That you are certain about?

Ans. Yes.

Q. 770. Do you not think of the Hermitage L L or Hoosier State L L, or Badger State L L, or Lawrence L L?

Ans. Well, that depends upon what the customer orders. If it was a specific order I would think of the name of the goods that was ordered; if not, I would think of the name I had in the stock. If the customer ordered Hermitage L L I would send it to him; if he ordered Hoosier State L L I would send it to him; if he ordered Badger State L L I would send it to him; if he ordered Lawrence L L I would send it to him—that is, if I had them; if not, I would go out and buy them and send them to him, as that is my custom.

Q. 771. Then, if I understand what you mean, it is this: That if one should order from you simply so many pieces of L L or should speak to you of L L, in the absence of specifying which, or of any particular L L you would understand him to mean a four-yard brown sheeting of either of the above brands you have mentioned. Am I correct?

Ans. I would understand a customer to mean a four-yard goods.

Q. 772. Would you not understand him to mean a four-yard goods of one of the particular brands you have above mentioned?

Ans. Not in all cases, as there are many other L L besides those I have specified. If he was a well-known customer and had received brands from me I would know what to send him, but that is not always the case, as L L specified above are so similar in char-
492 acter either one satisfies the customer, because he gets the grade of goods he wants.

Q. 773. But is it not true that in such a case, where no specific brand is mentioned, that at once those brands with which you are familiar—one or all of them—come to your mind?

Ans. As a rule.

Q. 774. When the customer ordering simply L L sheeting, without specifying what particular brand, is an old customer, and to whom you had previously sold the Lawrence goods, or Badger State, or the Hoosier State, or some other L L, you would at once suppose he meant the L L he had been accustomed to purchase from you, would you not?

Ans. Well, we are more than likely. That is the rule, to give him the same goods he ordered before. If they are not in the house we would give him one of the others.

Q. 775. Suppose such an order—that is, for so many pieces of L L, without specifying which particular brand—should come from a new customer, how then would you fill it?

Ans. If I had the goods in the house I would give him Hoosier State L L.

Q. 776. Suppose you had in the house both the Hoosier State and Lawrence L L, then how would you fill such an order?

Ans. As in answering the previous question—Hoosier State L L.

Q. 777. Why would you send him the Hoosier State L L in preference to the Lawrence?

Ans. Because I consider them better goods for the money at the same price; that is the first reason; secondly, because they are more popular with my trade generally; and, thirdly, because we can buy them cheaper as a rule.

Q. 778. You would have no warrant from such an order to suppose such a customer preferred the Hoosier State to the Lawrence, would you?

Ans. As I said before, L L means the grade four-yard goods, and as Hoosier State L L are better and more popular in my trade I would be warranted in selling Hoosier State L L.

Q. 779. My question was not what you would be warranted in sending such a customer, but what warrant would you have, if any, from such an order to suppose he preferred the Hoosier State to the Lawrence?

Ans. The only fact, as he mentioned no name of goods that he wanted, but left it to my judgment.

Q. 780. But so far as you know he might have meant the Lawrence goods?

493 Ans. I would have no right to judge of that.

Q 781. Is it not true that you push in the trade, for the reasons above given, the Hoosier State L L in preference to the Lawrence?

Ans. It is not true for the following reasons: A few years ago the Lawrence Manufacturing Co. made their L L of very inferior grade and lighter in weight, and to the damage of my trade with some people, and many people objected to them and returned the goods to us, and we had trouble with them on that account, and people preferred better four-yard goods. It was at that time when the Hoosier State L L became popular with my trade.

Q. 782. What time was this?

Ans. I don't remember the year—a few years ago. I can refer you to George C. Richardson & Co., to whom I returned the goods, and got allowance for bad goods and light weight—that is, for goods returned to them and allowed to people in the country, for which we never got reclamation.

Q. 783. How often did this occur?

Ans. Quite a number of times. My complaint was upon two or three large lots of goods. It took me a long time to sell them out.

Q. 784. Did you buy your Lawrence L L directly from Geo. C. Richardson & Co.?

Ans. Always when they were agents, unless I could buy them cheaper from second hands. By second hands I mean persons to whom they sold them, or at times when they did not have them.

Q. 785. Did you purchase these several large lots, about which you had complaints, from Geo. C. Richardson & Co.?

Ans. Two of them I did direct. One, I think, came from H. P. Claflin & Co.

Q. 786. What did you do with the two large lots you purchased from Geo. C. Richardson & Co., both of which you say were bad and of light weight?

Ans. I sold them, except a few I returned.

Q. 787. How many bales were in these respective lots?

Ans. One was one hundred bales. I forget how many was in the other.

Q. 788. What did you do with the lot you purchased from H. B. Claflin & Co.?

Ans. I sold them; from twenty-five bales upward.

Q. 789. Did you make any reclamation on H. B. Claflin & Co., by reason of the fact that this specific lot was bad and of light weight; if so, with what result?

Ans. I made no reclamation on Claflin.

494 Q. 790. Did you pay for such goods the full market price, or were they not sold to you as inferior goods?

Ans. Lawrence L L, like all other L L, means a four-yard standard quality, but these lots spoken of were not of that weight or quality. Yes, we paid for them the current, well-established price of that date, because Lawrence L L means the weight and grade. Goods not up to standard of the Lawrence Manufacturing Co. are branded Shawmut.

Q. 791. Did you make any complaints either to Claflin & Co. or to Geo. C. Richardson & Co. that this lot was bad and of light weight?

Ans. I made no complaint to Claflin. I had made positive complaints to Geo. C. Richardson & Co. several times, and at that period it was so common for these goods to be of that character that I made no complaint to Claflin.

Q. 792. How were the L L you purchased from Claflin stamped?

Ans. Like all the other Lawrence that we have ever had.

Q. 793. Describe the stamp.

Ans. Well, I will have to get you a piece of the goods. It is a Lawrence L L; that is the way they were stamped.

Q. 794. How do you know that this particular lot of goods you got from Claflin were made by the Lawrence Manufacturing Co.?

Ans. By familiarity for many years with the goods.

Q. 795. So far as you know personally, this lot of goods may have been made by some other manufacturing Co. and stamped Lawrence L L, in imitation of the Lawrence L L of the Lawrence Manufacturing Co.?

Ans. The Lawrence L L goods are all put up yarded, marked, branded, and have little ear-marks on them that a buyer would know different from any other goods. This specific lot of goods from H. B. Claflin & Co. the witness thinks was shipped direct from the manufacturer's mill, although owned by Claflin. I think so—I am not positive on that point, yet this lot of goods from H. B. Claflin & Co. were better than one or two lots from Geo. C. Richardson & Co. direct, and there could be no need for any person to counterfeit.

The worst lot of Lawrence L L I ever bought were from Geo. C. Richardson & Co. direct. My knowledge of Lawrence L L justify me in saying emphatically that the goods spoken of coming from H. B. Claflin & Co. were Lawrence Manufacturing Co. goods.

Q. 796. Do you wish to be understood as swearing positively that, of your own knowledge, this lot of goods was made by the Lawrence Manufacturing Co.?

495 Ans. Of my own knowledge—that is, my individual knowledge, I do not know that they ever made any sheeting whatever, but if they ever made any Lawrence L L sheeting they made the lot from Claflin, according to my judgment, although I have sold millions of dollars represented coming from that manufacturing Co.

Q. 797. How soon after, or was it before, you purchased the two lots from Richardson & Co. that were bad and of light weight was it that you purchased this lot from Claflin?

Ans. It was within a year or two afterwards.

Q. 798. With reference to the two lots you purchased from Richardson & Co., did you make any reclamation on them; and, if so, with what result?

Ans. I made reclamation; got nothing except allowance for goods returned. I held a lot of goods, returned by express ten pieces as sample lot, getting no allowance except for those returned by express; the rest was sold.

Q. 799. In selling these three lots of goods that were bad and of light weight, two of which you say came from Richardson & Co. and one from Claflin, did you inform your customers that they "were bad and of light weight?"

Ans. I did not know it myself until informed by my customers of the fact, who made claims upon the goods; then examined those I had in the forms and found them the same, and made report to Geo. Richardson & Co.

Q. 800. At the time you received such complaint from your customers you had part of the goods still in stock?

Ans. Yes, sir; most of them.

Q. 801. Who sold that portion of these goods that went to your customers?

Ans. I sold some of them. I did not sell all.

Q. 802. You did not notice nor did any of your other salesmen notice before that portion of them were sent to your customers that the goods were "bad and of light weight?"

Ans. The brand or ticket on each staple being so well known, like these, we did not examine them critically, supposing them to be all right. The first complaint we had was from our customer; then we made an examination and found them of light weight and inferior.

Q. 803. In selling the remainder of these lots to your customers did you inform them that they were "bad and of light weight?"

Ans. To some I did, not all. They were not a light
496 weight, as stated; they ran irregular; we simply sold them as L L.

Q. 804. From such customers that you informed these goods were not up to the standard you heard no complaint?

Ans. I heard complaints from those before we found it out; after we found it out we sold them as they were, and there were no more complaints to such people as we sold them as "they were."

Q. 805. Can you give us the year in which you purchased these two lots of L L's from Richardson & Co.?

Ans. I cannot from memory; it was about four or five years ago.

Q. 806. Since that time you have been handling, off and on, Lawrence L L, have you not?

Ans. We have.

Q. 807. Have you any private brand which you have stamped on L L sheeting; if so, what is it, and by whom are such goods stamped for you?

Ans. I have no private brand of my own on L L sheeting.

Q. 808. How long have you been handling Hoosier State L L?

Ans. I think ever since the mills started to make them; I am not sure about that, but we have handled them for years.

Q. 809. Has your house ever kept the Lawrence L L from your forms when you had them in stock and exposed to view other L L?

Ans. We generally keep them on the forms with other goods; we always keep them on the forms, except when we happen to have a few or about none in the house, the same as we do with other goods; when we get low in stock on any goods in the L L or any particular goods we lay them aside so as not to get entirely out of goods for country customers.

Q. 810. Is it not true that in your trade the Lawrence L L have been very popular?

Ans. They were popular years ago, but not as popular now as the Hoosier State—that is, in my trade.

Q. 811. Is it not true that up to the time you commenced to sell Hoosier State L L or these other L L's you have mentioned that in your trade the Lawrence L L was the only four-yard goods branded with L L that was very popular?

Ans. There were times when we sold no L L except the Lawrence and the Atlantic; we have sold in proportion to the trade more Lawrence L L since the competition of other four-yard goods has come on the market, and it has been the result of competition.

Q. 812. As compared to the Lawrence L L, how many Atlantic L L's did you sell when there were no others in the market but these two?

497–499 Ans. Sometimes more Atlantics and sometimes more Lawrences. We dropped the Atlantic when so many other Western goods came upon the market, and have not sold them since. We have, of late years, kept Lawrence L L, and sold the trade what they wanted.

Q. 813. From whom did you buy your Atlantic L L?

Ans. The last we bought, I think, was from the E. R. Mudds, Sawyer & Co. We always bought them from agents when we could get them; sometimes from second hands.

Q. 814. Taking the time as a whole, prior to the coming in of

trade of the other L L, how did your purchase of the Atlantic L L compare with the purchase of the Lawrence L L?

Ans. That question I cannot answer. Lawrence L L's were never very popular until late years, and no four-yard goods were very popular until the last few years.

Q. 815. You mean, of course, in your own trade?

Ans. That is all I know, certainly.

Q. 816. State how long your present firm has been in existence, and give the names of the firms and the periods of the time you were connected with the same during the past twenty years.

Ans. J. H. Wear, Boogher & Co.; have been in existence nine years. Dan'l W. Bell; I was his partner for two years, and Henry Bell & Son, three years previous.

Q. 817. Now, which of these firms purchased these three inferior lots of L L from Richardson & Co. and Caflin & Co.?

Ans. J. H. Ware, Boogher & Co. bought them.

JESSE L. BOOGHER.

Subscribed and sworn to before me this 13th day of December, A. D. 1886.

JOSEPH E. McGINNIS,
Notary Public.

ST. LOUIS, Mo., *Dec.* 14, 1886.

My fee as notary public, paid by defendant, $25.

JOSEPH E. McGINNIS,
Notary Public.

500 No other witness present, adjourned to 9.30 a. m., December 16, 1886.

DECEMBER 16, 1886.

Met, pursuant to adjournment, at 9.30 a. m.

D. P. ERWIN, being produced, sworn, and examined, deposes as follows:

Q. 996. State your name, age, residence, occupation, and how long so engaged.

Ans. D. P. Erwin; 41; Indianapolis; merchant; member of firm D. P. Erwin & Co., wholesale dry goods, about 25 years.

Q. 997. State whether or not you are acquainted with the custom of manufacturers of sheeting as to the manner they stamp sheetings for the purpose of indicating the manufacture, and how they grade, and the understanding of the trade.

Ans. Well, I am acquainted with the way various grades are stamped, and how they are understood by the trade.

Q. 998. State how sheetings are stamped to indicate the manufacture and difference in grades as understood by the trade.

Objected to as incompetent and immaterial.

501 Ans. Usually accompanying the mill name or brand are letters of the alphabet; that is all, I believe.

Q. 999. State for what purpose the name of the mill is used, and for what purpose letters of the alphabet are used.

Same objection.

Ans. The name of the mill is to properly locate the manufacturer in the minds of the purchaser, I suppose, and the letters of the alphabet designate the quality.

Q. 1000. State whether or not the letters alone would or not indicate to the trade any particular manufacturer or particular quality.

Same objection.

Ans. No.

Q. 1001. State whether or not the letters L L, as they are found stamped upon sheeting, would or not alone indicate to the trade any particular manufacture or particular quality.

Ans. No; L L is generally recognized to apply to muslins under a certain grade.

Q. 1002. State what brands of sheetings with L L stamped thereon you have handled.

Ans. I could hardly begin to name them all. We have had Indian Warrior L L, Matthews L L, Lawrence L L, Indiana L L, Badger State, Lancaster L L, and muslins branded L L without anything else on them, and various others with L L and fancy names.

Q. 1003. State whether or not you ever handled the Atlantic Mills L L, and for how long a time have you known them in the trade.

Same objection.

Ans. I think Atlantic Mills L L were the first muslins I ever handled branded with these letters. I do not remember how far back it was I first commenced to recognize this particular mark.

Q. 1004. State the custom of the trade in ordering sheetings as to using both the name and the letters in the order.

Same objection.

Ans. Almost invariably the brand and letters are stated.

Q. 1005. State whether or not many of the letters of the alphabet are, in common, used to indicate grades of sheetings.

Same objection.

Ans. I can recall nearly every letter of the alphabet as being used in this way.

Q. 1006. State whether or not many letters of the alphabet are used in common by many different mills.

Same objection.

502 —. Yes; A, B, and C, L L are most commonly used.

Cross-examination by Mr. RAINEY:

Q. 1007. Can you mention any trade-mark composed of letters which, when used, suggest to your mind the manufacturer that makes such goods? If so, please state them.

Objected to.

Ans. Yes, I do; A C A ticking applies to Amoskeag tickings; the letter R and the letters L L applies to the production of various mills, brown muslins, that would be brought to my mind upon mentioning them.

Q. 1008. What mill or manufacturer comes to your mind when you hear the letters L L mentioned?

Objected to.

Ans. The L L applies to so many mills there is considerable confusion in my mind as to which he might desire, unless he stated the brand or name.

Q. 1009. Mention the manufacturers or mills that comes to your mind when you hear L L mentioned.

Objected to.

Ans. It would depend entirely upon what connection it was mentioned in.

Q. 1010. For instance, what?

Objected to.

Ans. For instance, if a man were ordering of me L L brown muslin I should conclude, unless he mentioned the mill brand or name, that he wanted our Indiana L L; this would be the first thing to occur to me.

Q. 1011. What other manufacturer or mill would you think of upon receiving such an order besides the Indiana?

Objected to.

Ans. The one I had most in stock of.

Q. 1012. The Indiana is a private brand of your house, is it not; and, if so, by what mill is it made?

Objected to.

Ans. Yes; the Evansville Cotton Manufacturing Co.

Q. 1013. Then, if I understand your previous answer, when you get an order for simply L L sheetings you first think of goods made by this company; is that correct?

Objected to.

Ans. Yes; if we have them in stock, provided I do not know what he has been accustomed to getting from us.

Q. 1014. How long have you been handling L L sheetings made by the defendant company?

503 Objected to.

. Ans. I think about ten years, if I recollect rightly.

Q. 1015. Did you handle any L L sheetings of four yards to the pound prior to your purchasing such goods from the defendant Co.? If so, state what they were.

Objected to.

Ans. Well, I don't want to do any injustice to your people, and I wish that I could recollect of using your L L muslins previous to using that of the Evansville Mill. If I did handle them it must have been in very small quantities, for I cannot definitely recall them in my stock.

Q. 1016. Why do you suppose that your remembering or not remembering any fact would be an injustice to the persons whom you designated as your people?

Objected to.

Ans. I assume in this case if I could testify to using or handling many L L muslins of their manufacture a long time prior to our purchases of the Evansville Mills, that it would be to their interest; hence my regret that I cannot so testify.

Q. 1017. To whom do you refer by "your people" and "their" in your last two answers?

Objected to.

Ans. If this suit is brought by Lawrence Mills I mean them, and if by their selling agents, Townsend & Yale, I refer to them as your people, and as to their manufacture I refer to the Lawrence Mill L L muslin.

Q. 1018. Were you not informed before you were sworn to testify, by some one, on what subjects you would be examined?

Objected to.

Ans. I do not regard myself as having been so informed.

Q. 1019. Did you not know before you were sworn in this case as to what you would be examined?

Objected to.

Ans. I had some conversation on the subject of this examination, but as to any definite questions that might be asked me I have not been informed, except possibly the outline of the first question asked me in my direct examination.

Q. 1020. Did you not know before you were sworn that you were to be examined as to the meaning of L L in the trade?

Objected to.

Ans. I do not believe that I was.

Q. 1021. Did you not know that you were to be examined about L L sheetings made by the Lawrence Manufacturing Co.?

Objected to.

504 Ans. Yes; I knew the suit was with reference to that.

Q. 1022. Did you not also know, before you were examined,

that you were expected to support the theory that L L did not mean Lawrence goods?

Objected to.

Ans. If I understand the question I must say no.

Q. 1023. Does L L, to you, have any reference to goods made by the Lawrence Manufacturing Co.?

Objected to.

Ans. I sell the brand of muslin made by the Lawrence Manufacturing Co. and branded Lawrence or Lawrence Mills L L. I am very certain it is one or the other.

Q. 1024. Now, will you please answer my last question?

Objected to.

Ans. I think my last answer covers the question.

Q. 1025. Will you swear that when you hear L L mentioned it conveys to your mind no reference to the goods made by the Lawrence Manufacturing Co.?

Objected to.

Ans. Only when the Lawrence Manufacturing Co. is mentioned in connection with L L or the word Lawrence in connection with L L's.

Q. 1026. How long have you handled Lawrence L L's?

Objected to.

Ans. I think I answered that once before—that my recollection of handling these goods dates about ten years back.

Q. 1027. Have you handled these goods ever since that time?

Objected to.

Ans. We have handled more or less of them at intervals.

Q. 1028. As compared to any other L L you have handled, have you handled more or less of the Lawrence?

Objected to.

Ans. Very much less until this year, when we could not obtain a supply of Indiana L L's, of which we use more.

Q. 1029. About how many bales of Indiana L L's, on the average, per year, have you handled?

Objected to.

Ans. I cannot state.

Q. 1030. Who buys and sells these goods for your house?

Objected to.

Ans. I buy them and direct the sale.

Q. 1031. What other L L's have you or have you had with
505 a private stamp or brand, and by whom are they made?

Objected to.

Ans. We have none at present. We have had two other brands confined to us in our market, one from the Evansville and another from a Southern mill—the McGinnis Mill—and a third, as I recollect, from the Henderson Mill.

Q. 1032. Give the name of such private brand and by what mills such were made.

Objected to.

Ans. The Lancaster, from the Evansville Mill; the Indian Warrior, from the McGinnis Mill, and an L L, without any other marks or brand, from the Henderson Mill. These are the only L L's I recollect of being confined to us in our market.

Q. 1033. By whom is the Indian Warrior made you mention or from whom do you purchase it?

Objected to.

Ans. I decline answering unless obliged to, owing to a possible annoyance I may be subjected to by making public what I regard strictly private in my business.

Q. 1034. Were such goods stamped with the words "Indian Warrior L L" thereon at your request or suggestion?

Objected to.

Ans. No.

Q. 1035. Were the goods branded with Indiana L L so branded at your request?

Objected to.

Ans. I do not recollect the original request for these goods; our re-orders have been for such as we have had.

Q. 1036. By whom are these goods ordered for your firm?

Objected to.

Ans. By me.

Q. 1037. Is it any benefit to your firm and your trade to have L L stamped on these goods; if so, what?

Objected to.

Ans. Owing to the many L L's that are being made by the various mills and the different qualities under these letters I am inclined to the belief they are no material benefit to us or our trade.

Q. 1038. And yet is it not true that you keep such goods in your stock branded with L L all the time to supply the demands of your customers?

Objected to.

Ans. I cannot say that we keep these goods entirely owing to a demand for them. We buy and have always in stock, or
506 nearly always, L L muslins, owing to the fact that mills that use these letters are offering inducements for their purchase.

Q. 1039. Is there anything stamped on the several L L's you have

mentioned, to wit, Indian Warrior, Matthews, Lawrence, Indiana, Badger State, and Lancaster, that indicates where, by whom, or for whom the same are made; if so, what is it?

Objected to.

Ans. I think not. In some instances possibly there may be the words Mill Manufacturing Co. or corporation designation, but for whom they are made or the exact location of the mill, I believe, is not stated.

Q. 1040. Does your house ever sell its Indiana L L's or has it ever sold them or any other L L's, giving preference to them over the Lawrence L L's?

Objected to.

Ans. This would depend entirely upon our stock and the profit there would be in it. We have favored Lawrence L L's and we have discriminated against them as circumstances justified or interests dictated.

Q. 1041. When the market price of L L's was against the Lawrence did your house ever keep concealed the Lawrence goods and keep exposed to the view of your customers the other L L which you could handle to your better interest?

Objected to.

Ans. Only when our stock was small and the time for purchasing not propitious. We do not take off of our stands, sometimes, such goods as our duplicate stock is running low in and favor those we have more of. This has been the case with Lawrence L L, as well as others.

Q. 1042. As a rule, how many other brands of four-yard goods stamped with L L do you keep in stock with the Lawrence or at the same time you have the Lawrence?

Objected to.

Ans. We have no rule governing this; we have at the present time five other brands besides the Lawrence L L's.

Q. 1043. When you refer to the trade you mean your own trade, do you not?

Objected to.

Ans. Yes, sir.

Q. 1044. Have you not customers that prefer the Lawrence L L to any other?

Objected to.

Ans. I would have no way of knowing this, rarely ever selling any goods myself. It is a poor muslin that has no friends.

507 Q. 1044½. Have you not had customers to ask you or to write your house for the Lawrence L L's?

Objected to.

Ans. Yes, sir.

Q. 1045. Do you always sell them or send them, on such orders, Lawrence L L's?

Objected to.

Ans. With pleasure, when we have them, always.

Q. 1046. When you have not the Lawrence L L's in stock don't you fill such orders with whatever L L's you have on hand, giving preference to the Indiana L L?

Objected to.

Ans. It would depend entirely upon the customer. We would as much hesitate to send Indiana L L to one ordering Lawrence as we would hesitate to make other substitutes for orders. We would write the man ordinarily before doing so.

Redirect examination:

Q. 1047. State whether or not you have different grades of the Indiana brand besides the four-yard sheeting; if so, what are they?

Objected to as incompetent and immaterial.

Ans. Yes; we have at different times had Indiana A, B, C, and D, as well as Indiana L L's.

Q. 1048. State if you handled any four-yard goods upon which the quality is not represented by L L.

Same objection.

Ans. Yes; more than we do of any one L L brand.

Q. 1049. In case the name of the corporation is stamped on the sheetings, as in case of the Lawrence Mill sheetings, would or not the name indicate by whom they were made?

Ans. Yes.

D. P. ERWIN.

Subscribed and sworn to before me this the 16th day of December, 1886.

ORLANDO KNOWLTON,
Notary Public.

INDIANAPOLIS, IND., *Dec.* 16, 1886.

My fees for taking two depositions, $10.

Received payment.

ORLANDO KNOWLTON,
Notary Public.

CINCINNATI, OHIO, *Dec.* 17*th*, 1886.

Adjourned from Indianapolis, Indiana, and taking of depositions resumed.

508 Present: D. C. Givens, solicitor for defendant, and W. G. Rainey, solicitor for complainant.

E. W. STIMSON, being produced, sworn, and examined, deposes as follows:

Q. 1050. State your name, age, residence, and occupation, and how long so engaged.

Ans. E. W. Stimson; forty-five; wholesale dry-goods merchant; been in the business twenty-four years with one concern at Cincinnati, Ohio, with the George W. McAlpin Company and its predecessors; I am now secretary of that company.

Q. 1051. State in what territory the George W. McAlpin Company and its predecessors do or have done business.

Ans. Principally Ohio, Indiana, Illinois, Kentucky, and West Virginia, but have considerable trade in Tennessee, Northern Alabama, and Georgia.

Q. 1052. State if during your experience as a dry-goods man you have handled and become familiar with brown muslins or sheetings.

Ans. I was a salesman in our house for fourteen years and a buyer for nine years, and, of course, have a general knowledge of qualities and values of sheeting.

Q. 1053. State, if you know, the understanding in the trade as to the use and meaning of the letters of the alphabet when found stamped upon sheeting; and, if you do, please state how sheetings are usually stamped, and the understanding in the trade as to the meaning of letters of the alphabet when found stamped thereon.

Objected to as incompetent and immaterial.

Ans. It has been the custom of manufacturers of sheetings to brand them, in connection with the mill stamp, with letters and figures to designate qualities and grades; for instance, A representing first quality; B, second quality; C, third quality; B B representing a finer count of goods and C C a still lower grade. As representing possibly the product of one mill, I mean the kinds or grades that one mill would make. This has been a custom as far back as I remember or as long as I have been in business.

Q. 1054. State whether or not or to what extent the letters of the alphabet are consumed to designate grades and to what extent the same letters are commonly used.

Same objection.

Ans. My impression is that nearly every letter of the alphabet is used to greater or less extent on sheetings. Some letters more than others are commonly used.

Q. 1055. State whether or not you have ever handled any four-yard sheetings upon which was stamped, in connection with other words or brands, the letters L L, to indicate the grade. If
509 you have, state whether or not said letters have reference to any particular manufacturer.

Ans. We have handled for a number of years four-yard sheetings upon which has been stamped, in connection with various brands, the letters L L, which simply designate the weight and count.

Q. 1056. State whether or not you have handled four-yard sheeting upon which the letters L L were not stamped; and, if so, to what extent.

Ans. We handle various brands and qualities of sheeting weighing four yards to the pound that are not branded L L, but simply with the name of the mill, and occasionally with a letter other than L L. We handle large quantities of all grades of four-yard sheetings.

Q. 1057. State whether or not you have ever handled or known in the trade the Hoosier State L L. If so, what popularity has it attained?

Same objection.

Ans. We have handled large quantities of Hoosier L L, and believe them to be as popular as any goods of similar make, particularly in Southern Indiana, Southern Illinois, and Kentucky.

Q. 1058. State whether or not its reputation in the trade is because of any similarity to other brands of four-yard sheeting.

Same objection.

Ans. I think their popularity is mainly based upon the fact that they are found to be an excellent fabric for general use, and have been sold by both jobber and retailer at a very low price, and that grade of sheeting largely taking the place of goods of heavier weight.

Q. 1059. State whether or not the popularity of most all four-yard goods is not because of the low prices for which they are sold.

Same objection.

Ans. Largely so; for instance, the retail price of that grade of sheeting has been five cents for the last six months, making it the cheapest fabric sold of that kind of shirting, and have been sold correspondingly as low for a great many years.

Q. 1060. State whether or not you have ever handled the Atlantic Mills L L sheeting.

Same objection.

Ans. I think we have; still I would not be positive; the name is very familiar.

Cross-examination:

Q. 1061. Do you know of any letters of the alphabet which stamped on sheetings or cotton goods indicate to you when mentioned any manufacture? If so, state what letters.

510 Objected to.

Ans. The only one I call to mind now, Amoskeag A C A ticking and a Park 90 check. Still in the former case another tick has been branded A C A by another manufacturer.

Q. 1062. State whether you think of any manufacturer of sheetings when you hear L L spoken of. If so, what?

Objected to.

Ans. The one being sold.

Q. 1063. Suppose you are not selling any L L sheetings, but sitting in your office or walking the street, and any one should speak to you of L L sheetings, or if you should get an order for L L sheetings, would you think of any manufacturer; if so, of what?

Objected to.

Ans. Upon receipt of the order we would ascertain from last purchase what brand of L L we had sold to the party. If out of that particular brand would substitute any other of similar quality.

Q. 1064. Question repeated, and an answer to the same requested.

Ans. I have given an answer. (Witness asks attorney if he wishes it in detail.) I would like to make my answer clear, and will try and do so by saying that should I be asked regarding L L sheetings I would be most likely to think of the one we are handling at the time.

Q. 1065. Question repeated, and witness is asked to please answer whether he thinks of any manufacturer under the circumstances required of; and, if so, of what.

Ans. I would be as likely to think of Aurora L L, Brighton L L, Hoosier State L L, McGinniss L L, Pacolett L L; one as soon as the other, as we have handled all this season. Had we handled a Lawrence L L this fall I might have thought of those; in other words, whichever ones we happen to have in stock at the time.

Q. 1066. How long have you known and handled L L sheetings made by the Lawrence Manufacturing Company?

Objected to.

Ans. I cannot state exactly. I should say twelve years; perhaps longer. I have known them as long as they have been sold. I think I have.

Q. 1067. Before you handled these other L L's you have mentioned should one have spoken to you about L L sheetings or ordered of you L L sheetings would you not have thought of the Lawrence goods?

Objected to.

Ans. Yes, sir.

Q. 1068. And when you had them in stock, together with
511 other L L's, under the same circumstances as asked above, you would have thought of the Lawrence L L's as well as the other L L's you might have in stock, would you not?

Objected to.

Ans. I think I have answered that question previously.

Q. 1069. You mean by this last answer that when you had Law-

rence L L's in stock with other L L's and should one ask you about L L's you would have thought of the Lawrence as well as of any other L L's you may have had in stock. Is that correct?

Objected to.

Ans. I might have done so.

Q. 1070. What private brand has your firm, if any, which it stamps on its four-yard sheetings, together with the L L, and by what manufacturer is the same put on for you?

Objected to.

Ans. We handle the four-yard sheeting under a Brighton stamp, with the L L in connection.

(Witness here stops and asks if he is obliged to give the mill that makes it. Mr. Givens says, Not unless you want to. It is private business. You may either decline and give your reasons or not, as you wish.)

The Brighton stamp is our own, and we decline to say by what mill manufactured.

Q. 1071. Is it manufactured by the defendant in this case, The Evansville Cotton Manufacturing Company?

Objected to.

Ans. No, sir.

Q. 1072. Is it manufactured by the Aurora Cotton Mills?

Objected to.

Ans. I decline to answer further.

Q. 1073. How long have you been selling your four-yard sheetings under this private stamp?

Objected to.

Ans. About six months.

Q. 1074. What L L sheetings have you sold which were made by the defendant company?

Objected to.

Ans. The Hoosier State L L.

Q. 1075. Who makes the Matthews L L sold by you?

Objected to.

Ans. I don't know.

Q. 1076. Who makes the Aurora L L sold by you?

Objected to.

Ans. The Aurora Cotton Mills, Aurora, Illinois.

512 Q. 1078. Did your house ever sell any other L L in preference to the Lawrence while you had the Lawrence in stock?

Objected to.

Ans. We endeavored to do so because there was a better margin in other L L's than Lawrence.

Q. 1079. Did your house ever conceal from the view of your customers the Lawrence L L's while keeping other L L's exposed to view?

Objected to.

Ans. Yes, sir; because we made more money on the other goods.

Q. 1080. Is it any advantage to your trade to have L L stamped on your four-yard sheetings in connection with your private brand of Brighton?

Objected to.

Ans. I think it is.

Redirect examination:

Q. 1081. State whether or not you use your private brand on other goods or grades of sheeting than four-yard sheetings.

Objected to as incompetent and irrelevant.

Ans. We use the name Brighton upon jeans, ticks, cheviots, checks, and canton flannels, as well as two other grades of sheeting.

Q. 1082. When you answered a cross-interrogatory asking if you had concealed Lawrence L L sheetings what did you mean by the word conceal, and explain it?

Ans. By the word conceal I mean we kept a bale of Lawrence L L's open in the warehouse and the other L L's in stock, and the inducement was to sell the L L's in stock because of the extra profit.

Q. 1083. State who stamps for you the brand The Daisy B B sheeting.

Same objection, because not brought out on cross-examination.

Ans. I decline to answer for the reason that it is a private stamp.

Recross-examination:

Q. 1084. Do you have stamped the letters L L on any of your goods, and in connection with Brighton, except on your four-yard sheetings?

Ans. No, sir.

Q. 1084½. Is there anything stamped on your goods, in connection with Brighton and L L, that indicates where, by whom, or for whom the same were made?

513 Objected to.

Ans. No, sir.

Q. 1085. State if you are not the owner of the brand Brighton, and sheetings stamped Brighton can only be had from you, and is for the purpose of indicating to your trade goods from your stock.

Ans. The stamp Brighton is ours and can only be used by us. It is used for that purpose.

EUL. W. STIMSON.

STATE OF OHIO, }
Hamilton County, } ss:

Sworn to before me and subscribed in my presence this 17th day of December, 1886.

SILAS E. HURIN,
Notary Public, Hamilton County, Ohio.

CINCINNATI, *Dec.* 18, 1886.

Taking depositions resumed.

Present: D. C. Givens, for defendant and W. G. Rainey, for complainant.

JOHN B. SPECHER, being produced, sworn, and examined, deposes as follows:

Q. 1086. State your name, age, residence, occupation, and how long so engaged.

Ans. John B. Specher; age, 44; wholesale dry-goods business; Cincinnati, Ohio; member of the firm of Specher Brothers & Company; been in business twenty-one years.

Q. 1087. State whether or not, during your experience as a dry-goods merchant, you have handled brown muslins or sheetings upon which was stamped the letters L L in connection with other stamps, and manufactured by different cotton mills. If you have, state whether or not said letters refer to any particular manufacturer of sheeting or indicate to the trade any particular manufacturer.

Ans. We have handled brown muslins with the stamp L L on them; various makes and grades of brown muslin. The word L L in brown muslin refers to a medium grade of fine brown cotton; the grade L L referred to a cotton between a light weight and a heavy weight; usually come stamped that way. We have had brown muslins and cottons of various grades and makes.

Q. 1088. State whether or not you have ever handled the Atlantic L L sheeting. If so, for how long have you known it?

Objected to as incompetent and immaterial.

Ans. We have handled Atlantic L L sheeting; have known it for probably fifteen or twenty years.

JOHN B. SPECHER.

514 STATE OF OHIO, }
Hamilton County, } ss:

Sworn to before me and subscribed in my presence this 18th day of December, 1886.

SILAS E. HURIN,
Notary Public, Hamilton County, Ohio.

C. IGLANER, being produced, sworn, and examined, deposes as follows:

Q. 1088. State your name, age, residence, and occupation and how long so engaged.

Ans. C. Iglaner; thirty-five; Cincinnati, Ohio; wholesale dry-goods merchant; twenty years.

Q. 1089. State whether or not, during your experience as a dry-goods merchant, you have handled brown muslins or sheetings made by different mills upon which was stamped the letters L L, in connection with other words. If so, what brands, so stamped, have you handled, and for how long a time?

Ans. I have handled a great many makes of brown cotton with the letters L L. We have handled Graniteville L L, Atlantic L L, Forest City L L, one made at Janesville, Wisconsin, Aurora L L, Pacolett L L, Shawmut L L, Superior L L, Lawrence L L. I am positive I know more, but, not having prepared for this question, cannot think of more at present.

Q. 1090. State the custom in the trade in ordinary goods as to using both the brand and the letter.

Objected to as incompetent and immaterial.

Ans. Our orders in at least nineteen out of twenty instances call for both the brand and the letters.

Q. 1091. State whether or not the letters stamped upon sheeting indicate to the trade any particular manufacturer or the grade.

Ans. They certainly do not indicate any particular manufacturer, and I know of some letters which are used on grades of sheetings entirely different in weights and qualities.

Q. 1092. State whether or not the letters L L when found stamped upon sheetings indicate to the trade any particular manufacturer.

Ans. I know that they do not.

Q. 1093. If you can remember, state how long you have known the Atlantic L L.

Same objection.

Ans. I could not say how long. I know it is a long while—good many years. I can remember another L L a great deal longer, but don't know how long either. That is the Graniteville L L.

Q. 1094. State whether or not other letters of the alphabet
515 are used as extensively upon sheetings as the letters L L.

Same objection.

Ans. There are other letters which I think are used even more extensively, particularly the letter A.

Cross-examination:

Q. 1095. You have stated in answer to a certain direct question, "not having prepared for this question," as a reason for not answering it more definitely. Now, did you prepare to answer any question before you came here?

Ans. I certainly inquired what I was to come for.

Q. 1096. Then are we to understand that before you came here, in answer to your inquiry, you were informed for what you were wanted?

Ans. I was asked how long I can remember brown cotton with the letters L L; also, if I remembered which brands; that was all, I guess.

Q. 1097. Were you not asked whether L L meant any particular manufacturer of such goods?

Ans. Yes; and also whether if a party orders from us any L L sheeting if he did not state the brand of the goods as well as the letters.

Q. 1098. Were you told anything about the subject-matter of this litigation?

Ans. No. We received a letter, I don't know how long ago, giving us the information, and asking, I think, to give our experience, or if we were willing to give our experience.

Q. 1099. From whom was that letter received?

Ans. From Mackey, Nisbet & Co., Evansville, Indiana.

Q. 1100. Before you were sworn in this case did you not know that it had reference to L L sheetings made by the Lawrence Manufacturing Company?

Ans. I certainly did.

Q. 1101. What is the style of your house and how long has it been such a firm?

Ans. Louis Stix & Company. I could not say whether it is thirty-five or thirty-eight years; over thirty-five, I know.

Q. 1102. What connection have you with this firm, what are your particular duties, and for how long have you been so connected?

Ans. Since (1878) seventy-eight I have been a member of the firm; a partner in the firm. I am a buyer of domestic and other goods. I have been a buyer ever since I am a member of the firm. I also oversee the business in general, and previous to being so engaged was salesman, and before that entry clerk.

Q. 1103. Should a customer ask you if you had any L L sheetings what would you think of?

516 Objected to.

Ans. I would think of one or more of the many makes which we would have in stock at the time of being asked.

Q. 1104. Has your house handled L L sheetings made by the Evansville Cotton Manufacturing Company on which there is a private brand of your house; if so, what is it?

Ans. We have the goods made by them under Superior L L brand. I don't know if they use this brand for other houses in other markets.

Q. 1105. Do you order from its agents such goods and have them so stamped for you?

Ans. We do.

Q. 1106. Why do you have L L put on them?

Ans. Because, when ordering these goods for the first time, the agent selling them to us suggested to put goods under a brand to be used exclusively by us in Cincinnati, and, as far as L L is concerned, I don't think these letters were mentioned, and I certainly

would not object not to have those letters on the goods at all. I wish to say that the private brand I mean is the word Superior.

Q. 1107. How long have you sold goods branded Superior L L?

Ans. I don't think it is a year.

Q. 1108. How long have you handled and known in the trade L L sheetings made by the Lawrence Manufacturing Co.?

Ans. Ever since I sold dry goods.

Q. 1109. Before you handled any other four-yard sheetings branded with L L besides the Lawrence, when you heard L L mentioned, did you not think of the Lawrence goods?

Ans. I can't say that I did. I know that my trade in those days used principally Graniteville L L.

Q. 1110. Did you not also at the same time handle the Lawrence L L?

Ans. I suppose very often we had Lawrence L L at the same time.

Q. 1111. Then is it not true that while you may have had these two L L's on hand at the same time that when you heard L L's mentioned you would think of one or the other of these makes?

Ans. Dry-goods men, as a rule, when they want Lawrence L L or any other L L have sense enough to ask for it.

Q. 1112. What is the exception to that rule?

Ans. I don't think we ever receive an order where the brand was not named.

Q. 1113. Do you see all the orders that come into your store?

Ans. When I am in the city I usually open the mail, and I think I see ninety-eight out of one hundred orders that come when I am in town.

517 Q. 1114. Did you never hear any one ever speak of L L sheetings without mentioning the make?

Ans. I may have heard, but certainly don't remember that I did.

Q. 1115. Now, don't you know it to be a fact that the common way of speaking of these sheetings by your retail customers or by the agents selling such goods is L L sheetings?

Ans. I do not. It is true, usually, four-yard goods of a certain style of manufacture are branded L L, but we have at present three entirely distinct styles of cotton with the letters L L, being different in weight as well as texture.

Q. 1116. Is it not true that L L means to you goods manufactured by either the Lawrence Manufacturing Company or the Evansville Manufacturing Company or some other company whose brands you have mentioned or whose brands you may be handling?

Ans. L L means nothing to me.

Q. 1117. This you swear to?

Ans. I do.

Q. 1118. Does it not mean to you cotton sheetings?

Ans. I can't see how it does.

Q. 1119. Will you swear it does not?

Ans. I can only repeat that L L means nothing to me.

Q. 1120. Will you swear that when you hear L L mentioned it does not indicate to your mind cotton sheetings?

Objected to.

Ans. I don't think that L L alone is ever mentioned.

Q. 1121. I am now asking you about L L's, and have repeatedly in your hearing mentioned them alone, as my questions will indicate. Now, will you swear that when such questions are put to you you do not think of cotton sheetings?

Objected to.

Ans. As we were only talking of cotton sheetings I certainly know that you referred to that article.

Q. 1122. Who had the conversation with you you referred to in your cross-examination, before you came here to be sworn?

Ans. Mr. D. C. Givens.

Q. 1123. When he asked you about brown cotton with the letters L L did you not understand him to refer to sheetings?

Ans. He asked me very little. We wrote Mackey, Nisbet & Co. a letter telling them what we were willing to testify to if called upon, and Mr. Givens having that letter in his possession and taking it from his pocket, I knew at once what he wanted of us.

Last question repeated.

518–520 Ans. Knowing his mission I certainly understood what he referred to, and of course understood him to refer to sheetings.

Q. 1124. Did you not also understand, at the time, that he had reference to L L sheetings made by, and of the suit brought by, the Lawrence Manufacturing Co.?

Ans. I did not know suit had been brought; in fact asked him whether that matter had not been dropped.

(My last question repeated.)

Ans. As stated, I know exactly what he referred to when he asked me if we were ready to testify about the matter. Certainly I knew to the matter between the Lawrence Manufacturing Co. and Mackey, Nisbet & Co.

Q. 1125. Then is it not true that when he spoke to you about L L sheetings, as you have testified to, it conveyed to your mind cotton sheetings with L L thereon, and also goods made by the Lawrence Manufacturing Co., did it not?

Ans. I would not like to say positively that he mentioned L L at all. He took our letter from his pocket, and, knowing exactly what he wanted of me, gave the matter very little thought until I came to this office this morning.

Q. 1126. Is it not true that within the past few minutes after the last question was dictated and before you answered it Mr. Givens stated in the presence of yourself that he did not mention L L at all?

(Mr. Givens says, That is not what I said.)

Ans. He said, as far as I can remember, "I do not think L L was mentioned at all."

Q. 1127. Does your house ever keep the L L sheeting made by the

Lawrence Manufacturing Co. off the counters and expose to view the Superior L L's or some other L L's?

Ans. We do.

Q. 1128. What is the weights of the L L sheetings you have above mentioned as being sold by your house?

Ans. The Forest City L L's, I think, weigh about 4.60, and the Atlantic L L near five yards to the pound. All the others are supposed to be four-yard goods.

C. IGLANER.

STATE OF OHIO, *Hamilton County,* } ss:

Sworn to before me and subscribed in my presence this 18th day of December, 1886.

SILAS E. HURIN,
Notary Public, Hamilton County, Ohio.

CINCINNATI, OHIO, *Dec.* 18, 1886.

Received my fees of defendant for three depositions, $10.

SILAS E. HURIN,
Notary Public.

521 United States Circuit Court, Middle District of Tennessee.
In Chancery.

THE LAWRENCE MANUFACTURING COMPANY
vs.
THE TENNESSEE MANUFACTURING COMPANY.

Depositions taken this 17th day of September before J. T. Spaulding, notary public, by consent, caption, certificate, and all informalities specifically waived.

Present: W. G. Rainey, solicitor for complainant, and J. M. Dickinson, solicitor for defendant.

Taken on behalf of the defendant.

The said witness, JOSEPH FRANKLAND, being duly sworn, deposes as follows:

Q. 1. State your age, residence, occupation, and for what length of time you have been so engaged.

Ans. I am 46 years old; residence, Nashville, Tennessee; occupation, merchant; being the head of the firm of Joseph Frankland, wholesale and retail dry-goods dealers, of Nashville; have been so engaged in Nashville for the last 23 years; previous to that I was engaged in the same business three years at Franklin, Tennessee—that is, from 1858 to 1861, at which time I went in the Southern army.

Q. 2. State whether or not during that time you have handled and been familiar with cotton fabrics manufactured in the United States.

Ans. I know the leading manufacturers—most of the leading manufacturers.

522 Q. 3. State whether or not the manufacturers of cotton goods of different kinds in the United States generally use letters stamped or pasted upon goods of their manufacture; and, if so, to what extent the alphabet is used in this way.

Objected to by complainant as incompetent and irrelevant.

Ans. A great many manufacturers use the letters to denote the grade of the goods made; the alphabet is so used to a large extent.

Q. 4. State what the trade with which you are familiar understand letters so attached to cotton fabrics to indicate.

Same objection.

Ans. It indicates the grade of goods they manufacture.

Q. 5. So far as your knowledge of the usage of trade goes, how are different kinds of goods designated and spoken of in the trade, in respect to the letters of the alphabet—that is, are the goods designated by the letters alone, or are the letters connected with the name of the goods or other parts of the brands of the goods?

Same objection, and also as leading.

Ans. The name of the goods would have to be mentioned first before you could tell anything about the letters on the goods, so far as quality is concerned.

Q. 6. Have you been familiar with and handled cotton goods made by the Lawrence Manufacturing Company, of Lawrence, Massachusetts?

Ans. With most of their brands.

Q. 7. Are you handling any of their goods now? And, if so, please state what kind.

Ans. We handle several grades of their goods, such as "Lawrence X X," "Lawrence Y," and "Shawmut X X," and there are some others I do not recollect. We handle blue denims manufactured by them.

Q. 8. State whether or not "X X" when spoken of in the trade is understood specially to indicate "Lawrence X X," when mentioned, without naming the word "Lawrence."

Objected to by complainant as irrelevant and incompetent.

Ans. I would not know anything about it unless "Lawrence" was mentioned with it.

Q. 9. State whether or not the same understanding is held by the trade, so far as you know it.

Ans. It is.

523 Q. 10. Have you ever handled "Lawrence L L" sheeting?

Ans. I have.

Q. 11. State what signification the letters "L L" stamped upon such goods had in the trade with which you are acquainted.

Ans. I do not understand that question.

Q. 12. State whether or not the letters "L L," when spoken of in

the trade, without the word "Lawrence" have been understood to indicate that they, necessarily, meant "Lawrence L L."

Ans. The trade would not know anything about it.

Q. 13. Do you mean that by merely mentioning the letters they would not know what particular make was indicated?

Ans. If the letters "L L," and nothing else, was stamped on goods, no one would know what they meant.

Q. 14. Please attach the head end here shown you as an exhibit to your deposition and mark it "Frankland A," and state what goods it is, where you got it, how long you have known the class of goods so labeled, whether or not you handle it, and by whom said goods are made.

Same objection.

Ans. I file it herewith, marked "Exhibit Frankland A." We got the piece of goods either from Smith, Hogg and Gardner or from Townsend & Yale, selling agents for the Lawrence Manufacturing Company. I have known this class of goods so labeled for a good many years; we have handled it for several years and do now; they are purported to be made by the Lawrence Manufacturing Company; it is so understood, and I buy them from their selling agents.

Q. 15. State how many grades of this goods you have handled, as near as you can, and how they are severally labeled.

Same objection.

Ans. I have handled about five or six grades of these denims; — some the quality is denoted by "9 ounce," that is one grade, and some of the other grades are by numbers—"220," "250," and some other numbers I cannot remember.

Q. 16. How about the upper part of the brand, the word "Lawrence," the bull's head, and the words "pure indigo denims?" State whether or not these appear on the other grades.

Same objection.

Ans. I think it does. We have four or five grades in stock, and they are labeled the same as the upper part of this brand.

Q. 17. Have you any seconds of this grade of goods? And, if so, state whether they have the upper part of the brand on them, and whether they have the lower part or not.

524 Same objection.

Ans. We have them in stock with no brand on them at all.

Q. 18. State whether or not you have handled "Atlantic L L" goods at any time.

Same objection.

Ans. We have, a good many years ago; it was about ten years ago, and we kept them for ten years before that.

Q. 19. State for what purpose five-yard brown cotton sheeting and four-yard brown cotton sheeting are used in common by consumers, if there are any purposes for which they are both adapted.

Ans. They are used for a great many purposes—shirtings and sheetings, &c.

Q. 20. State whether or not there is any competition between such goods.

Ans. There is; the five-yard has the preference; there is more of it sold, because it is cheaper.

Cross-examination by Mr. RAINEY:

Q. 21. How long have you been in the wholesale business?

Ans. About twelve years.

Q. 22. What section of the country do you reach with your goods?

Ans. Tennessee, Kentucky, Alabama, Mississippi, and Georgia.

Q. 23. What goods, what class of goods, do you mostly sell in these States?

Ans. Staple and fancy dry goods and notions.

Q. 24. Is there a large trade in coarse brown cottons in these States?

Ans. There is a large trade in the neighborhood of Nashville in coarse brown cottons, but in these other States it is very small.

Q. 25. From whom do you purchase coarse brown cottons?

Ans. We purchase them from the Tennessee Manufacturing Co.

Q. 26. Have you any familiarity with the trade west and northwest of this State?

Ans. No; I have not.

Q. 27. Have you any familiarity with the trade in Boston, New York, and Philadelphia, the Eastern and Middle States, and in Illinois, Indiana, and Ohio?

Ans. I do not understand the question. We buy goods in New York, Philadelphia, and Boston. Do you mean what those people buy?

525 Q. 28. I mean are you familiar with the dry-goods trade in these several cities and States last mentioned?

Ans. I am acquainted with the dry-goods trade in the cities, but not in the States last mentioned.

Q. 29. From whom do you purchase in the cities mentioned your coarse brown sheetings?

Ans. I do not buy any.

Q. 30. Then you do not know anything about the significance that may be attached to the letters "L L" in these several cities and States?

Ans. I know what the letters known in those cities —, but not in the States, as I do not go there. I price the goods in the cities and see that the prices are about the same as they are here.

Q. 31. What "L L's" do you price in these cities and where?

Ans. "Atlantic L L" and some other "L L's" the same weight of goods—"Lawrence L L's;" H. B. Claflin & Co., New York; Smith, Hogg & Gardner, New York. I do not remember of pricing "L L's" in Boston. I do not go there now; I used to go there; I buy goods there, though. I do not remember to have priced any "L L's" in Philadelphia.

Q. 32. Then your knowledge of the trade's significance of the letters "L L" in the East is confined to inquiries made at the houses of Claflin & Co. and Smith, Hogg & Gardner, of New York?

Ans. I do not understand what "L L" means. What "L L's" do you mean?

Q. 33. Last question repeated.

Ans. If the question relates to "Lawrence L L" that is correct.

Q. 34. Do you understand that the "Atlantic L L's" are of the same weight as the goods made by the Lawrence Manufacturing Company and branded "L L?"

Ans. I do not know that.

Q. 35. Do you know that they are of different weights?

Ans. I know there is a difference, but do not know how much.

Q. 36. What clerk with Claflin & Co., if any particular one, do you generally trade?

Ans. In the brown goods department. Mr. King waits on me.

Q. 37. How do you ask him as to the price of "L L" sheeting? Do you say, "What is the price of L L goods," or how?

Ans. I price the Lawrence Manufacturing Company's goods with other brown cottons, and if he has anything under the agents' prices to name them, and he generally takes me through the stock and shows me all through. When I speak of agents I mean whoever they may be.

526 Q. 38. Do you refer in the last answer to the agents of the Lawrence Manufacturing Company?

Ans. To the Lawrence Manufacturing Company's agents and others.

Q. 39. Of what other agents do you price "L L" sheetings?

Ans. I do not remember.

Q. 40. Then, if I understand you correctly, you first price "L L" sheetings with the agents of the Lawrence Manufacturing Company, and then you go to Mr. King, of Claflin & Co., and ask him if he has any "L L" cottons or brown cottons of the same grade as the "L L's" at a lower price than the "L L's" priced by such agents?

Ans. It is not always I go to the agents first; it is sometimes the case.

Q. 41. In talking with the agents of the Lawrence Manufacturing Company, do they not speak of them as "L L's?"

Ans. I think they do.

Q. 42. And is it not a fact also that Mr. King, of Claflin & Co., speaks of them as "L L's?"

Ans. Not to me; he does not. If he did I would ask him what "L L" he means, as he keeps various kinds.

Q. 43. What kinds of coarse brown "L L's" besides the Lawrence does he keep?

Ans. I do not know.

Q. 44. Will you swear that you ever saw at Claflin & Co.'s any coarse brown cottons stamped "L L" besides the Lawrence goods? If so, when was it?

Ans. I do not know whether I have seen others or not; I may have done so.

Q. 45. How long have you known coarse brown cotton stamped with "L L" of any manufacturer?

Ans. Many years; I cannot tell definitely how long.

Q. 46. Which is the first "L L" you ever saw?

Ans. If I remember correctly, I saw the "Atlantic L L's" first.

Q. 47. Do you call that a coarse brown cotton?

Ans. I do.

Q. 48. Should a customer come to your retail store and ask for a coarse brown cotton what would you show them?

Ans. I would show "Rock City" domestic; that is my leading brand. If they did not like that I would show them something else, "Nashville A A;" if that did not suit them I would give them "Lawrence X X."

Q. 49. Of what weight are these respective brands of goods?

Ans. I do not know.

527 Q. 50. Do you not know that Smith, Hogg & Gardner did and Townsend & Yale do now sell, as agents, goods of other manufacturers or mills than the Lawrence Manufacturing Company?

Ans. I think they do.

Q. 51. Do you know that the goods, a sample of which you have exhibited as "Exhibit Frankland A," was manufactured by the Lawrence Manufacturing Company?

Ans. I would judge they were; they bear that brand.

Q. 52. The brand, then, is the only information you have from which you judge these goods were made by the Lawrence Manufacturing Company?

Ans. Yes, sir.

Q. 53. When was it you sold "L L" sheetings made by the Lawrence Manufacturing Company?

Ans. A long time ago.

Q. 54. Do you handle any goods at present branded "L L;" if so, what or whose make?

Ans. We handle one grade of "Cumberland" sheeting branded "L L."

Q. 55. Whose make?

Ans. The Tennessee Manufacturing Company.

Q. 56. How long have you handled these goods?

Ans. I do not remember how long, but it is a good while.

Q. 57. Have you handled them five years?

Ans. Longer than that.

Q. 58. Have you known of any "L L" sheetings manufactured by the Lawrence Manufacturing Company sold in this market during the past five years?

Ans. I do not know that.

Q. 59. Give me the names of the other wholesale dry-goods houses in Nashville besides your house.

Ans. Herman Brothers & Company; Weil, Connell, Winter & Company; Buford, McLester & Company; O'Bryan Brothers; Fishel & Company; Handley, Reeves & Company; Buckner & Company; Fite, Porter, Lyles & Company; Anderson Green & Company; those are the principal ones.

Q. 60. Before you commenced to handle "L L" sheetings, made by the Tennessee Manufacturing Company, should any one have spoken to you about "L L" sheetings would you not have thought of the goods made by the Lawrence Manufacturing Company?

Ans. I should have asked the question, By whom are they made?

Q. 61. My question is, Would not the goods made by the Lawrence Manufacturing Company come to your mind?

Ans. Yes, sir.

528 Q. 62. Is it not a fact that in the trade with which you are familiar many brands of goods are known and talked about simply by mentioning the letters with which they have been a long time branded?

Ans. The letters and the make are the only way to designate them—that is, the letters and the maker's name.

Q. 63. Is it always true that different manufacturers brand the same grade of goods with the same letter or letters, or do they not have different letters to brand the same grade of goods?

Ans. Each grade is stamped with a certain letter; that letter denotes the quality of the goods; there are some houses that order a large quantity of goods and have their ticket or letter printed on the goods. That is my understanding.

Q. 64. Do you mean to be understood as saying that two different manufacturing companies always brand the same grade of goods with the same letter?

Ans. If they do they have something else on the goods to tell the difference.

Q. 65. Suppose two different companies use "X X" or "A A," do you understand that they both would stamp these letters on the same grade of goods—that is to say, if the one company put "X X" on its coarse goods, that the other company would put "X X" on the same grade of goods?

(Defendant excepts to this question because it does not call for the witness' knowledge as to whether this is done, but simply submits the supposed case as to what different manufacturers might or might not do, and it is not shown what manufacturers are meant, or that witness knows them and their special habits.)

Ans. According to my opinion, if two manufacturers of the same grade of goods would stamp "X X" or "A A" and put, in addition to that, some other brand on the same goods, everybody could tell what they are buying.

Q. 66. You have no personal knowledge on this point as to how the different manufacturers use the letters of the alphabet?

Ans. Only when I see the goods stamped.

Q. 67. When you see "X X" on goods made by one company, and then see it on goods made by another company, does that indicate to you that they are the same grade?

Ans. No, sir.

Re-examination by Mr. DICKINSON:

Q. 68. How is the Cumberland "L L" sheeting known and designated in the trade?

Ans. By being called for "Cumberland L L" 4-4 or 7-8
529 sheeting or shirting; the 4-4 is called sheeting and the 7-8 is called shirting.

Q. 69. Which of these is branded "L L," the 4-4 or the 7-8?

Ans. The 4-4.

Q. 70. I repeat question 68: How is the Cumberland 4-4 sheeting branded "L L" known and designated in the trade?

Ans. Cumberland sheeting.

Q. 71. Is it ever known in the trade simply as "L L" without the "Cumberland?"

Ans. No, sir.

Q. 72. You answered to question 61 that if "L L" was mentioned before you began handling the Cumberland "L L" that the goods of the Lawrence make would come to your mind; state whether or not also the goods of the Atlantic would not equally have come to your mind with that of the Lawrence.

Ans. About the same.

Q. 73. Do you know exactly how long "L L" has been branded on the Cumberland goods?

Ans. I do not remember how long, but the Cumberland sheeting has only been known as the Cumberland sheeting; but little attention was paid to the "L L."

Q. 74. When you stated that you had handled the Cumberland "L L" sheeting for five years did you mean to say that you had handled that goods five years, or that "L L" had been stamped on it five years—that is, did your answer have any reference to the length of time the goods had been stamped "L L?"

Ans. No, sir; only to Cumberland sheeting; I do not know long "L L" has been stamped on it.

Recross-examination by Mr. RAINEY:

Q. 75. Is it not true that you have always spoken of the Atlantic goods and the trade with which you are familiar has also spoken of such goods as "Atlantic L L's?"

Ans. The goods is known as "Atlantic L L's;" yes, sir; all goods that are branded "Atlantic L L's" are known as such.

JOSEPH FRANKLAND.

The said witness, R. J. LYLES, being duly sworn, deposes as follows:

I am 36 years of age; am a member of the wholesale dry-goods firm of Fite, Porter, Lyles & Company, of Nashville, Tennessee; I have been with said firm for the last 13 years; before that I had a little experience in the retail dry-goods business in Sumner county, Tennessee.

Q. 76. State whether or not that house has handled cotton fabrics during that time of different weights and qualities.

Ans. They have.

530 Q. 77. State whether or not manufacturers of cotton fabrics in the United States impress upon or attach, as a general custom, letters of the alphabet upon their goods.

Ans. They do.

Q. 73. State what the trade with which you are familiar understand letters impressed upon brown cottons and other goods to indicate.

Ans. NOTE.—This and the foregoing question objected to by complainant as incompetent and irrelevant.

Ans. It indicates grade, and in some instances I think it is put on there to beautify and enlarge their brand, but more especially to distinguish between the grades made by the same mill.

Q. 79. Do you handle any four-yard brown cotton branded "L L;" and, if so, of what grade and make?

Ans. We do; the Cumberland, made by the Tennessee Manufacturing Company.

Q. 80. How are those goods known and designated in the trade?

Ans. We know them altogether as Cumberland 4-4; we never use the "L L's" in our selling-room; they are only known as Cumberland 4-4's.

Q. 81. That is, the trade with which you are familiar?

Ans. Yes, sir.

Q. 82. Do you handle any other four-yard sheeting?

Ans. We do not.

Q. 83. As a merchant familiar with price lists, and also from quotations, have you known of any other sheetings branded "L L" besides the Cumberland?

Ans. There are several—Beaver Dam, Lawrence L L's, and Pacolet; there are a good many; I have not been keeping up with them.

Q. 84. State whether or not the trade with which you are familiar understand "L L" just by itself, without any other name coupled to it, to indicate any particular make of such goods.

Ans. No, sir; they would not understand what it meant.

Q. 85. Do you ever receive any orders simply for "L L" brown sheetings alone?

Ans. No, sir.

Cross-examination by Mr. RAINEY:

Q. 86. In questions 78 and 81 the words "the trade with which you are are familiar" have been used; what do you understand them to mean?

Ans. I presume it had reference to the trade to which we sold—the trade we had.

Q. 87. To what trade do you sell?

531 Ans. Largely in Tennessee, North Alabama, and Southern Kentucky.

Q. 88. Then, when you have answered as to a knowledge of this

trade, you wish to be confined to Tennessee, Southern Kentucky, and North Alabama?

Ans. Generally speaking, I do.

Q. 89. Then, as a matter of fact, you have no sufficient knowledge as to what is known in the trade, or understood in the trade, as to the meaning to be attached to letters on sheetings outside of the territory just referred to?

Ans. I have none, so far as selling is concerned, except in that territory.

Q. 90. In this territory do you know of any coarse brown cottons being sold branded with "L L" except the Cumberland "L L's?"

Ans. I do not.

Q. 91. In answer to question 83 you have stated you know from the price lists and quotations of the Beaver Dam, Lawrence, and Pacolet "L L's." Now, is it not a fact that all the knowledge you have of these several "L L's" is derived from the price lists and quotations?

Ans. Most of it is; the most knowledge I have of there being "L L's" is from the price lists.

Q. 92. Is it not true, also, with the other "L L's" which you have referred to in your answer to question 83?

Ans. That will apply to all except Cumberland.

Q. 93. In your answer to question 91 you have stated that the most of the knowledge you have about these "L L's" is from the price lists and quotations. Now, I will ask you if you have any actual knowledge, from experience or otherwise, of there being brown sheetings in the market stamped with "L L" except the Cumberland?

Ans. If you mean as to what we handle it refers only to the Cumberland "L L's;" I have handled no other kind. I know of other "L L's," but we handle no others.

R. J. LYLES.

SEPTEMBER 18TH, 1886.

Depositions continued as per adjournment.

J. B. O'BRYAN, being duly sworn, deposes as follows:

I am 48 years of age; am a member of the wholesale dry-goods firm of O'Bryan Brothers, of Nashville, Tennessee; have been a wholesale merchant in Nashville 20 years; my residence is Nashville, Tennessee. Prior to going into the wholesale business I was in the retail dry-goods business six years in Nashville, Tennessee.

Q. 94. Please examine the sample of goods here shown you and make it part of your deposition, marked "O'Bryan Exhibit
532 A," and state whether you recognize the goods and label and by whom it is made.

Ans. I make the sample shown me an exhibit, as stated, and mark it "Exhibit O'Bryan, A." The sample came from goods bought by me from Townsend & Yale, New York city, in July, 1886. Townsend & Yale are commission merchants of long standing in New York city and agents for the Lawrence canton flannels.

Q. 95. How many grades of this goods have you in stock, and how are they labelled?

Ans. I have three grades, labelled "E," "A," and "A A;" also one grade of bleached flannel, letter not now remembered, but different from this.

Q. 96. Do you mean that each grade has a different letter; and, if so, how is it attached?

Ans. Each grade has a designating letter pasted on the lower end of the piece similiar to the sample here shown, the letters differing on each grade.

Q. 97. State whether or not they all have a label like the one at the top of this sample with the words "Lawrence and the bull's head?"

Complainant objects to questions 94, 95, 96, and 97 as incompetent, irrelevant, and immaterial, and by consent of defendants' counsel it is understood the same may be used to the same effect as though interposed at the time the questions were asked.

Ans. They have.

Q. 98. State whether or not, according to your knowledge as a merchant and the understanding that you have of the usages and customs of the trade with which you are familiar, these letters so printed indicate the maker or the origin of the goods, and state what they are understood to indicate.

Same objection.

My question has reference to the letters alone, disconnected from any other word or symbol.

Ans. They do not. They indicate the quality of the Lawrence canton flannels when on the same piece of goods with the Lawrence ticket and bull's head.

Q. 99. State whether or not letters of the alphabet are generally used in the trade upon the cotton fabrics of different kinds and of different manufacture.

Same objection.

Ans. They are.

Q. 100. Please state whether or not they are extensively so used and to what extent the alphabet is used in this way.

Same objection.

533 Ans. Nearly all canton flannels and brown cotton goods have some letter or letters of the alphabet to designate the quality of that manufacturer; I suppose I have seen every letter in the alphabet used one or more times.

Q. 101. State whether or not the same letter of the alphabet frequently appears upon goods of the same general character of different makers.

Same objection.

Ans. It does.

Q. 102. State, according to your knowledge of the trade with which you are familiar, what letters of the alphabet impressed upon or attached to cotton fabrics are understood to indicate.

Same objection.

Ans. The quality of that manufacturer.

Q. 103. That is, the different letters are used to denote differences between different grades of goods.

Ans. Of the same manufacturer.

Q. 104. Please examine the books here shown you, marked "O'Bryan Exhibits B, C, D, and E," and state whether or not you recognize the publication; and, if so, state their standing and how they are accepted in the trade.

Same objection.

Ans. "B, C, D, and E," which are Sheldon's books, is recognized authority in the dry-goods trade as reference books and price lists in business centres. I have for several years past bought these books of Sheldon & Company for information on dry goods.

Cross-examination by Mr. RAINEY:

Q. 105. To what sections of the country does your knowledge of the dry-goods trade extend?

Ans. In selling goods, Kentucky, Tennessee, Alabama, and Georgia. As a buyer of goods, to New York and Philadelphia.

Q. 106. Do you buy the cotton goods, about which you have been questioned, in New York or Philadelphia, or both?

Ans. Canton flannels I have bought in New York only; general brown goods I have bought in New York, Tennessee, and Georgia.

Q. 107. You have stated in your direct examination that, according to your knowledge of the customs of the trade with which you are familiar, that the letters of the alphabet when put on goods indicate only the grade or quality of such goods of the mill or manufacturer making the same; is this always true?

Ans. Yes, sir.

534 Q. 108. Is it not true that such letters sometimes in the trade indicate more than the quality of the goods, and sometimes indicate the mill or manufacturer of the same?

Ans. Not to my knowledge.

Q. 109. According to your knowledge, are the same letters used by different manufacturers on the same grade or quality of goods?

Ans. They are not.

Q. 110. Have you any knowledge that "Exhibit O'Bryan A" was made by the Lawrence Manufacturing Company, of Lowell, Massachusetts?

Ans. Only so far as indicated by the Lawrence ticket, and being purchased from a reliable house, such as we consider Townsend & Yale.

Q. 111. Do Townsend & Yale tell you that these goods are manufactured by the Lawrence Manufacturing Company?

Ans. They told me at the time of purchase that they had been

made agents for the Lawrence canton flannels, nothing being said as to where they were made.

Q. 112. Or by whom they were made?

Ans. Or by whom they were made.

Q. 113. Do you not know that Townsend & Yale are agents for other mills or manufacturing concerns other than the Lawrence Manufacturing Company?

Ans. For several years I have bought goods from Townsend & Yale as agents for several knitting mills; not until July of this year did I know they were agents of any piece goods, and then only of the Lawrence canton flannels.

Re-examination by Mr. DICKINSON:

Q. 114. Question 109 was as follows: "According to your knowledge, are the same letters used by different manufacturers on the same grade or quality of goods?" to which you answered, "They are not." I will ask you if you mean to say by that that no two or more manufacturers use the same letters of the alphabet in any cases upon the same weight of brown cottons—that is, taking the different *of* brown cotton goods, do you mean to say that in no instances different manufacturers put the same letters upon the same weight of goods?

Ans. I can answer that only by saying that the letter indicates the quality only in connection with the manufacturer's name or designating brand. I could not answer any more definitely than that, as I do not know.

Q. 115. How long have you known of the goods of the Lawrence Manufacturing Company in the trade?

Ans. Several years; I cannot say how many.

535 Q. 116. Do you know of any other manufacturer in the trade that brands its goods with the words "Lawrence" and the "bull's head?"

Ans. I do not.

Recross-examination by Mr. RAINEY:

Q. 117. There may be other manufacturers who brand their goods with the word "Lawrence" and the print of the bull's head and you not know it?

Ans. Yes, sir.

J. B. O'BRYAN.

WILLIAM PORTER, being duly sworn, deposes as follows:

I reside in Nashville, Tennessee; am 65 years of age; have been in the wholesale business in Nashville constantly from 1855 to July, 1885, excluding three years during the war—between three and four; the firm was Evans, Fite, Porter & Co. and the Fite, Porter & Co. My successors are now Fite, Porter, Lyles & Company. I retired from the firm about a year ago and am not in business now.

Q. 118. State what, according to your knowledge of the trade with

which you are familiar, letters branded upon cotton fabrics are understood and accepted as indicating.

Complainant objected to the question as incompetent, irrelevant, and immaterial.

Ans. The letters would indicate the grade or quality of the goods, as I understand it.

Q. 119. Did you handle the brown sheeting made by the Tennessee Manufacturing Company branded "Cumberland," and does the firm of Fite, Porter, Lyles & Company handle the same sheeting now branded "Cumberland sheeting L L?"

Ans. They handled the Cumberland sheeting 4-4, branded "L L."

Q. 120. State whether or not since your retirement from said firm you have continued to assist them and have been familiar with their business.

Ans. Since selling out I have spent the principal part of my time there; I am familiar with their business. My son is now a member of the firm—two of them, in fact.

Q. 121. State how the Cumberland "L L" sheetings are known, spoken of, and billed in the trade.

Ans. They are called Cumberland 4-4 sheetings.

Q. 122. Are they ever called simply "L L" sheetings, that you ever heard of?

Same objection.

Ans. In all orders they are called just Cumberland sheetings. I never heard them called "L L's."

536 Q. 123. State whether or not there is competition between four-yard sheetings and five-yard sheetings.

Ans. There is.

Q. 124. Examine "O'Bryan Exhibits B, C, D, and E," and state whether you recognize these publications, whether you have used them in your business, and what is their standing as authority among dry-goods men generally.

Ans. I recognize them as Sheldon's reference books and price lists; I have used them in my business for a number of years; the merchants, so far as I know, generally recognize them as authority.

Cross-examination by Mr. RAINEY:

Q. 125. State what four and five yard goods you have handled—four and five yard brown cotton goods, I mean.

Ans. The Cumberland 4-4 as a four-yard goods and the Buena Vista 4-4 as a five-yard goods. Buena Vista is about five-yard goods.

Q. 126. What mill manufactures the Buena Vista?

Ans. The Tennessee Manufacturing Company.

Q. 127. Are you certain that it is a five-yard goods?

Ans. I would state, from my knowledge, it was about that; I will not say positively.

Q. 128. You have stated in your direct examination that you understand the letters when branded on cotton fabrics indicate only

the grade or quality of such goods; do you want to be understood as saying that the letters in every instance, when branded on cotton goods, indicate only the grade and quality?

Ans. That is my knowledge of goods and my understanding that it indicates only the grade and quality.

Q. 129. Letters when branded on cotton goods may have a different meaning to the trade in other parts of the United States than this, so far as you know, may they not?

Ans. As far as I know, they do not; possibly they may.

Q. 130. You do not undertake, then, to say that there is no instance wherein letters branded on cotton goods does mean to the trade wherein such goods are handled and sold anything more than the quality or grade of such goods?

Ans. I think I have answered that question; my knowledge is that it does allude to the quality or grade of the goods.

Q. 131. My question is, repeated in another form: In that part of the country where you have no knowledge of the trade there may be instances wherein letters branded on goods may mean more than the grade or quality?

Defendant excepts to this question on the ground that it is irrelevant; that it is arguing with the witness and is calling for a
537 statement about a supposed case and not for facts within his knowledge.

Ans. That I could not answer, because I do not know.

Q. 132. Do you pretend to say that throughout the United States that letters branded on goods in every instance only means grade or quality?

Ans. As far as I know, that is my knowledge of the lettering on goods.

Q. 133. Does your knowledge in this respect or familiarity with the trade in cotton goods extend throughout the United States?

Ans. My knowledge would be from the market in New York; based upon that we buy most of our goods there.

Q. 134. Last question repeated to the witness.

Ans. I am not familiar with the trade all over the United States.

Q. 135. Please state in what section of the United States your knowledge goes or extends.

Ans. I have been selling in Tennessee, Kentucky, Georgia, Alabama; then I state that I am familiar with the trade of Cincinnati, Louisville, St. Louis, and Memphis.

Q. 136. Is your familiarity or knowledge of the trade in these respective cities, including New York, derived from personal intercourse with the trade there, or do you derive it from dry-goods periodicals?

Ans. I derive it from our buyer, salesmen, and the periodicals. I mean by buyers buyers who purchase goods for us.

WM. PORTER.

The said witness, A. P. CONNELL, being duly sworn, deposes as follows:

My residence is Nashville, Tennessee; I am 42 years of age; am a member of the wholesale dry-goods firm of Weil, Connell, Winter & Company, of Nashville, Tennessee. I have been in the wholesale dry-goods business in Nashville since 1866.

Q. 137. State whether or not your house has for the past year or more handled any brown four-yard cotton sheeting with the letters "L L" stamped on them. If so, what brands?

Ans. It has the Cumberland "L L's."

Q. 138. How is that goods known and spoken of in the trade—that is, by what name and designation?

Ans. It is known as Cumberland "L L's," according to the printing on it.

Q. 139. What does the trade with which you are familiar understand letters stamped on cotton fabrics to indicate?

538 Ans. It indicates the quality and weight of the goods.

NOTE.—Last question and answer objected to by complainant as incompetent, irrelevant, and immaterial.

Q. 140. State whether or not the Cumberland four-yard sheeting are ever ordered or spoken of in the trade with which you are familiar simply as "L L's," or whether the word Cumberland is mentioned in designating those goods, as a rule.

Ans. The word is invariably used. I do not remember of ever receiving an order where the goods were designated simply as "L L's." The word "Cumberland" is always used.

Q. 141. State whether or not there is competition between four-yard and five-yard brown cotton sheetings.

Ans. There certainly is competition.

Q. 142. Please look at "O'Bryan Exhibit A" and "Exhibit Frankland, A," and state whether or not you recognize the brands on both of said exhibits; and, if so, how long have you known them, approximately, and where you have seen and been familiar with them.

Ans. I recognize those goods. I have known them somewhere between eight and ten years; ever since I have been a buyer of goods. I recognize the picture as being the ticket of the Lawrence goods. I first saw those goods in the house of George C. Richardson & Company, of New York; then their successors handled the same goods—that is, Smith, Hogg & Gardner. They were the agents for these goods.

Cross-examination by Mr. RAINEY:

Q. 143. What four and five yard goods have you handled?

Ans. We have handled no four-yard goods except Cumberland "L L's." We have handled no five-yard goods except the Buena Vistas.

Q. 144. With what trade are you familiar?

Ans. Tennessee, Kentucky, Alabama, Mississippi, and Georgia.

Q. 145. You know nothing, of your own knowledge, outside of the States named what letters stamped on cotton fabrics indicate.

Ans. My understanding is that the letters on goods have the same meaning all over the country.

Q. 146. I do not think you understand my question. I asked you if you had any knowledge outside of the territory indicated as to what the trade understands what letters indicate when stamped on cotton fabrics.

Ans. I understand the question, but I want to ask a question. I want to ask if you mean that my experience as a buyer ex-
539 tends into any other territory than that named.

Q. 147. You have stated that you understood the last question. I ask the same to be repeated and require a direct answer.

Ans. My knowledge extends further than that by coming in contact with buyers from other States.

Q. 148. What buyers from other States have you come in contact with, and from what States, that have told you what letters stamped on cotton fabrics indicate?

Ans. I have met buyers from the State of Ohio and from Illinois and from Missouri.

Q. 149. Name the buyers and the houses they represented.

Ans. My memory of names—I cannot call the name now to save my life, although it is very familiar to me. By the foregoing I refer to a merchant in Cincinnati; I give you another in Dayton, Ohio, Mr. Barlow. The buyer for Samuel C. Davis & Company, of St. Louis, whose name I cannot remember now. There are numbers of others whom I meet in New York in general conversation about such matters.

Q. 150. Do these men say to you that letters on cotton goods mean only quality and weight?

Ans. That is the general understanding among all buyers of goods, so far as my knowledge goes.

Q. 151. My question did not call for the understanding of buyers, but whether these men you have referred to said to you that letters on cotton goods indicated only quality and weight?

Ans. They asked me what certain letters, certain brands of goods, are worth, of course, indicating the value of the goods by the letters.

Q. 152. Is that what you mean by saying that these men said to you that letters on cotton goods only indicate quality and weight?

Defendant excepts to the foregoing on the ground that witness has never stated that these men said to him what the question asserts, but only stated that there was a general understanding to that effect among said buyers.

Defendant's attorney here suggested the reading to the witness of the foregoing question, to which complainant's attorney objects as improper.

Here an adjournment was had until 10 a. m., Sept. 20th, 1886.

MONDAY, *Sept. 20th*, 1886.

Taking of depositions resumed pursuant to adjournment.

Present: As of Saturday, 18th instant.

Question 152 repeated.

540 Ans. That is what I mean; yes.

Q. 153. What is the weight of Buena Vista cotton goods?

Ans. It is my understanding it is five-yard goods; I never weighed them.

Q. 154. Do you purchase or sell these goods for a lower or higher price than Cumberland "L L's?"

Ans. We purchase and sell them for a lower price than the Cumberland.

A. P. CONNELL.

BENJAMIN HERMAN, being duly sworn, deposes as follows:

I am 36 years of age; reside in Nashville, Tennessee; am a member of the wholesale dry-goods firm of Herman Brothers & Company, of Nashville; have been in the wholesale dry-goods business in Nashville since 1868.

Q. 155. State whether or not you handle or have handled brown cotton sheetings and other cotton fabrics during that time.

Ans. I have.

Q. 156. What is your selling trade—in what States?

Ans. Our principal trade is in Tennessee; we sell some goods in Southern Kentucky, Alabama, Northern Mississippi, and some goods in Illinois.

Q. 157. Have you handled and do you handle brown sheetings—four-yard sheetings—made by the Tennessee Manufacturing Company and branded "Cumberland sheeting 4-4 L L?"

Ans. We have and do handle them now.

Q. 158. How have those sheetings been known and designated in the trade with which you are familiar?

Ans. As "Cumberland 4-4 sheetings."

Q. 159. Have you ever known them to be spoken of or ordered simply as "L L" sheeting.

Ans. Never.

Q. 160. State what the trade that you have designated as your selling trade and the trade in the States designated by you understand, so far as your trade knowledge extends, letters when stamped upon brown sheetings and other cotton fabrics to indicate.

Complainant objected to the question as incompetent, irrelevant, and immaterial.

Ans. They indicate the grade and weight of the goods.

Q. 161. State whether or not there is any competition between four-yard and five-yard brown cotton sheetings.

Ans. There is a competition, and at the same time they do not come in conflict with each other in our trade.

Q. 162. Are there any purposes for which both four-yard and

five-yard brown cotton sheetings are adapted, the choice for
541 those purposes being controlled by the varying preferences of buyers? And, if so, state what some of those purposes are.

Ans. Both four and five yard goods can be used for the lining of ready-made clothing. Buyers are governed by the price of the sheeting or the goods either.

Q. 163. State whether or not both are used by poorer classes for shirtings, sheeting, and general household purposes, such as underwear, &c.

Ans. They are.

Q. 164. Please examine "O'Bryan Exhibits B, C, D, and E," here shown you. State whether or not you know these publications; if so, for how long and what their authority is in the trade.

Same objection.

Ans. I have known these publications ever since I have been in business. They are a gui le for an inexperienced buyer—that is about what they are—giving the names of the firms handling certain goods; they are well known books distributed among jobbers and retail men both.

Q. 165. Please look at "O'Bryan Exhibit A" and "Frankland Exhibit A," here shown you, and state whether or not you recognize those goods, and by whom they are made; and, if so, what is there by which you recognize them?

Same objection.

Ans. I recognize those goods. They are made by the Lawrence Manufacturing Company. I recognize those goods as made by the Lawrence Manufacturing Company by the bull's head that is on them.

Q. 166. How long have you known the bull's head in connection with cotton fabrics manufactured by the Lawrence Manufacturing Company?

Ans. Ever since I have known the goods, it has been quite a number of years.

Q. 167. Have you ever handled any of the cotton flannels or denims of the Lawrence Manufacturing Company?

Ans. We have in years gone by handled some of the cotton flannels. I did not buy them of their agents, but bought them of Claflin & Company.

Cross-examination by Mr. RAINEY:

Q. 168. How do you know that Exhibit "Frankland A" was made by the Lawrence Manufacturing Company?

Ans. I know it by the bull's head or trade-mark.

Q. 169. What trade-mark do you refer to?

Ans. The bull's head.

Q. 170. Whose trade-mark is it?

542 Ans. I should take it to be the Lawrence Manufacturing Company's trade-mark, never having seen it upon any other goods.

Q. 171. Is that the only reason you know it is their trade-mark?

Ans. That is the only reason I have for knowing it.

Q. 172. Does the Lawrence Manufacturing Company stamp the bull head on all its goods?

Ans. I cannot say as to that.

Q. 173. May not other mills or manufacturers stamp the bull's head on its goods?

Ans. I cannot say whether they do or not.

Q. 174. You would not undertake to say that no other mill does do it?

Ans. I could not say that.

Q. 175. Then, if I understand you correctly, it is simply a guess or suppositition on your part that Exhibit "Frankland A" was made by the Lawrence Manufacturing Company simply from the fact that there is a picture of a bull's head upon it; is that correct?

Ans. No; it is not; it is from the fact that I have never handled, or, to my knowledge, have seen any other goods with the same trade-mark upon it.

Q. 176. And that is the reason you think this exhibit was made by the Lawrence Manufacturing Company?

Ans. That and the fact that I have always seen their goods so branded is my reason.

Q. 177. Outside of that fact, have you any knowledge that this exhibit was made by the Lawrence Manufacturing Company?

Ans. I have no reason outside of that, but I see their trade-mark and their name on the goods.

Q. 178. Where is their name on these goods?

Ans. The Lawrence Manufacturing Company is on all their goods.

Q. 179. These words, "Lawrence Manufacturing Company," are stamped on all their goods with which you are familiar, are they not?

Ans. I do not know that the name "Lawrence Manufacturing Company," but the name of "Lawrence" is stamped on all their goods, so far as I know, excepting seconds.

Q. 180. Then, if I understand you, the reason why you supposed Exhibit A referred to is made by the Lawrence Manufacturing Company is because it has the bull's head and Lawrence Manufacturing Company on it; is that correct?

Ans. It has the bull's head and Lawrence trade-mark. The Lawrence name is what I intended to say.

Q. 181. Is the word "Lawrence" the name of the Lawrence Manufacturing Company?

Ans. I cannot say.

543 Q. 182. I desire you to answer me, specifically, whether you have any actual or personal knowledge that this Exhibit A was made by the Lawrence Manufacturing Company?

Ans. I have not.

Q. 183. Have you any actual or personal knowledge that Exhibit "O'Bryan A" was made by the Lawrence Manufacturing Company?

Ans. I have not.

Q. 184. Then, when you answered question 165 that these goods were made by the Lawrence Manufacturing Company, such a statement was not made on any actual knowledge or personal knowledge of that fact?

Ans. It was made from my knowledge and experience that all the goods that I have handled of the Lawrence Manufacturing Company have had the bull head and the name "Lawrence" stamped on them.

Q. 185. Do you think that this is actual knowledge on your part that these goods were as a fact made by the Lawrence Manufacturing Company, or do you simply conclude that they were made by the Lawrence Manufacturing Company from the fact that they are stamped with a bull's head and the word "Lawrence," and from the further fact that you have handled other goods similarly stamped which you suppose were made by the Lawrence Manufacturing Company?

The first part of the foregoing question is excepted to by defendant upon the ground that it is arguing with the witness; and, further, that the witness has specifically answered that he had no actual, personal knowledge as to who manufactured the goods.

Ans. I have never handled any goods stamped likewise, except those made by the Lawrence Manufacturing Company. I cannot say from actual knowledge that exhibits shown me were made by the Lawrence Manufacturing Company.

Q. 186. Do you know that the goods stamped like the exhibits of your own knowledge which you have handled were made by the Lawrence Manufacturing Company?

Ans. I have every reason to believe so.

Q. 187. My question is (and I desire your special attention to it) whether you have actual or personal knowledge that such goods were made by the Lawrence Manufacturing Company?

Ans. I have never seen them made.

Q. 188. Is that the best answer you can give to my last question?

Ans. It is.

Q. 189. From whom have you purchased the goods which you suppose were made by the Lawrence Manufacturing Company?

544 Ans. To the best of my knowledge, I have bought those goods from A. B. Claflin & Company, of New York.

Q. 190. How do you know that letters stamped on cotton fabrics indicate the grade and weight of such goods?

Ans. From personal knowledge, general information, and usual mercantile transactions.

Q. 191. Have you personal knowledge that in every instance where letters are used on cotton goods that they indicate to the trade where they are sold only the grade and weight of such goods?

Ans. To my personal knowledge, where people to whom we sell, men who buy understandingly, take the letters on goods as indicating the grade and weight.

Q. 192. You are now limiting your personal knowledge to your own trade, are you not?

Ans. I am not.

Q. 193. Does your personal knowledge on this point extend to all sections of the United States?

Ans. From general information, yes.

Q. 194. Do you understand personal knowledge and general information to mean the same thing?

Ans. I do not.

Q. 195. Have you personal knowledge of the usages and customs of the dry-goods trade in all sections of the United States?

Ans. I have in most sections.

Q. 196. Last question repeated to the witness.

Ans. I have in most sections.

Q. 197. In what sections have you such personal knowledge?

Ans. For instance, from Boston down the Atlantic coast as far as Galveston, Texas, west as far as Kansas City. Boston, of course, includes New York city. In fact, I am pretty well familiar with it, except on the Pacific coast and in Portland, Maine, and along there.

Q. 198. Have you visited all these respective places in person in connection with the dry-goods trade?

Ans. I have visited nearly every city, some little places I have not visited, from Boston as far West as St. Louis and Chicago. I have never visited any cities in the extreme South or on the Pacific coast. Some of these places I have visited for the purpose of buying and selling goods, and others just on a friendly visit.

Q. 199. Have you visited St. Louis for the purpose of buying or selling cotton goods?

Ans. No.

Q. 200. Question repeated as to Chicago.

Ans. No.

Q. 201. Question repeated as to Kansas City.

Ans. No.

Q. 202. Question repeated as to Cincinnati and Louisville.

Ans. I have been to Cincinnati many years ago, when in
545 the retail trade, to buy cotton goods. I answer no as to Louisville, so far as cotton goods is concerned.

Q. 203. In these several cities mentioned did any one, if so, who, say to you that letters on cotton goods always meant the weight and grade of such goods?

Ans. I cannot remember just who, but in conversations with merchants generally it is a foregone conclusion that letters indicate the weight and grade of the goods—according to mercantile rules.

Q. 204. Foregone conclusion in whose mind, yours?

Ans. In the minds of buyers, generally, who handle cotton goods.

Q. 205. Do you state it as a fact within your personal knowledge that in the cities of Kansas City, St. Louis, Chicago, and Louisville that it is a foregone conclusion of the trade at these respective places that letters stamped on cotton goods in every instance mean only the weight and grade of such goods?

Ans. I state from personal knowledge and general information

that in most cities above mentioned letters indicate and are generally accepted as denoting the grade and weight of the goods.

Q. 206. In which of these cities is this the understanding of the trade?

Ans. Louisville, Chicago, and St. Louis, according to my knowledge.

Q. 207. Can you give the name of any single individual in either of these cities who have said to you that in every instance letters stamped on cotton goods mean only the weight and grade of such goods? If so, give the name of such individual.

Ans. My information is general; I cannot name any one particularly.

Q. 208. Suppose it to be a fact proven in this case that many persons in the dry-goods trade at Chicago should say that there are instances wherein letters stamped on cotton goods mean more than its weight and grade, would you then undertake to say that it is a fact within your personal knowledge that in every instance letters stamped on cotton goods mean to the trade of Chicago simply the weight and grade of cotton goods on which they are stamped?

Defendant excepts to the foregoing upon the ground that it is arguing with the witness and is improper cross-examination, in that it undertakes to influence the mind of the witness by a suggestion that facts have been proven in the case in conflict with his testimony.

Ans. I cannot answer that question.

Q. 209. Why?

546 Ans. From the fact that some men might state anything and I would dare not gainsay it.

Redirect examination by Mr. DICKINSON:

Q. 210. Please explain what you mean by your last answer, I do not understand it clearly.

Ans. The question asked me is whether, to my personal knowledge, whether to the trade of Chicago, without any exception, letters would indicate the grade and weight of goods. I declined to answer from the fact that there might be instances where some individuals would pay no attention to letters on goods.

Q. 211. State whether or not it is generally understood in the trade that the Lawrence Manufacturing Company makes goods like the exhibits shown you and stamps them with the picture of the bull's head.

Objected to by complainant as not proper redirect examination.

Ans. It is.

Q. 212. State whether or not you have seen goods of that character similarly labelled in dry-goods houses in New York; and, if so, name some of the houses.

Same objection; and, further, that this and foregoing questions are incompetent, irrelevant, and immaterial.

Ans. I have in H. B. Claflin & Co. and George C. Richardson & Company; also Smith, Hogg & Gardner.

Q. 213. State whether or not the letters "L L" stamped upon brown cotton sheetings are understood by the dry-goods men and the trade generally, so far as you know, to indicate anything except only grade or quality.

Same objection.

Ans. To my knowledge, as far as the trade extends, the letters only indicate grade and quality.

Q. 214. State whether or not a part of your information of trade usages and their understanding of the meaning of letters on cotton goods is derived from your contact in New York with buyers of such goods from all parts of the country and their habits of speaking of and designating goods.

Same objection.

Ans. It is.

Recross-examination by Mr. RAINEY:

Q. 215. What sheetings stamped with "L L," besides the Cumberland, have you handled and sold?

Ans. Of late years we have handled nothing but Cumberland. I cannot remember just what we handled previous to that.

547 Q. 216. How long have you handled Cumberland sheetings stamped with "L L?"

Ans. I cannot recollect just the length of time; ever since the mill has made them.

Q. 217. As long as ten years?

Ans. I think not. I do not think they have made them that long.

Q. 218. As long as five years?

Ans. I do not recollect how long the mill has made them; we have handled them ever since the mill has made them.

Q. 219. Have you handled them a year?

Ans. I think we have; yes.

Q. 220. Two years?

Ans. We have handled Cumberland longer than two years. I do not know how long the "L L" has been stamped on them.

Q. 221. Did you ever hear any buyers talk about "L L" sheetings who lived in Chicago?

Ans. I never have without mentioning the name of the goods in connection with the letters.

Q. 222. Or St. Louis or Kansas City?

Ans. Same answer as before.

Q. 223. What buyer from Chicago, St. Louis, or Kansas City have you heard speak of "L L" sheetings?

Ans. Come in contact with so many, can't recollect any one in particular.

Q. 224. With whom have you conversed as to what your testimony would be in this case?

Ans. I have conversed with no one regarding testimony, but had the fact mentioned to me by Mr. Goodwin that they had a lawsuit with the Lawrence Manufacturing Company and was asked by him whether I ever knew the letters on goods to indicate anything more than weight or grade; to which I answered no.

Q. 225. Is that all that Mr. Goodwin said to you?

Ans. All, to my knowledge, regarding the case.

Q. 226. Did not he tell you that the suit was about "L L?"

Ans. In my previous answer I stated that Mr. Goodwin told me he had a suit with the Lawrence Manufacturing Company, and I omitted to state that it was about using the letters "L L" on the Cumberland 4-4 sheeting.

Q. 227. You purchased goods largely from Mr. Goodwin or his company, do you not?

Ans. We do.

BENJAMIN HERMAN.

548 STATE OF TENNESSEE, *County of Davidson:*

The foregoing depositions of James Frankland, R. J. Lyles, J. B. O'Bryan, William Porter, A. P. Connell, and Benjamin Herman were taken before me, as stated in the caption, the several witnesses were by me duly sworn, and their evidences were taken down by me on the type-writer, and their depositions severally signed by the respective witnesses in my presence; and I certify that I am not interested in the cause nor of kin or counsel to either of the parties, and that I sealed them up and delivered the same to counsel for defendant without being out of my possession or altered after they were taken.

Given under my hand and notarial seal this 20th day of September, 1886.

[SEAL.] J. T. SPAULDING,
Notary Public.

My fee, $23, paid by defendant.

J. T. SPAULDING,
Notary Public.

THE LAWRENCE MANUFACTURING CO.
vs.
THE TENNESSEE MANUFACTURING CO. } In Chancery.

Deposition of George M. Goodwin, taken in the above cause in behalf of defendant, by consent, on type-writer, before J. T. Spaulding, notary public; all formalities of caption, certificate, filing, and publication are waived.

Present: W. G. Rainey, solicitor for complainant, and J. M. Dickinson, solicitor for defendant.

The said witness, being duly sworn, deposes as follows:

Q. 228. State your residence, and whether or not you have any business connection with defendant; and, if so, for how long and in what capacity.

Ans. My residence is Nashville. I have a business connection with the defendant; it has existed since 1874, and in the capacity of treasurer.

Q. 229. Define your duties as treasurer.

Ans. My duties as treasurer consists of the general management and conduct of the business of the company. I am considered as its executive officer.

Q. 230. State what opportunities you have had for becoming acquainted with the customs of other cotton manufacturers in respect to branding their goods.

Question objected to as irrelevant and incompetent and immaterial.

549 Ans. The opportunities are such as will be acquired by the twelve years contact with the business of the company and frequent visits among manufacturers and the trade generally.

Q. 231. State whether or not it is a part of your business to study and know the demands of consumers of different kinds of cotton fabrics and for what uses cotton fabrics are consumed.

Ans. It is, within the limit of the variety of goods manufactured by the defendant, which comprises brown cotton goods of various weights and widths, colored goods, bags, cotton batting.

Q. 232. For what purpose are letters of the alphabet branded upon cotton goods by manufacturers and what do they indicate to the trade?

Same objection as the last.

Ans. For the purpose of distinguishing and designating different grades and weights of goods.

Q. 233. State whether or not it is the custom generally of manufacturers of brown cotton goods in the United States to use letters for that purpose. And, if so, to what extent is the alphabet absorbed in this way?

Same objection.

Ans. It is the general custom, and the alphabet is well nigh, if not altogether, consumed by said custom.

Q. 234. For what purpose did you put "L L" on your "Cumberland brown sheetings?"

Same objection.

Ans. For the purpose of designating it as four-yard sheeting with a mark generally accepted by the trade as indicating such grade of goods.

Q. 235. At that time and now, what was the accepted meaning in the trade of the letters "L L" branded on brown sheeting?

Same objection.

Ans. The accepted meaning of such a distinguishing mark indicated a four-yard brown cotton.

Q. 236. Did you or not have any intention of simulating complainant's brand for the purpose of taking any part of their trade by inducing purchasers to think that they were getting goods made by the Lawrence Manufacturing Company when buying your goods branded "Cumberland sheeting L L?"

Same objection and also because it is suggestive.

Ans. To the first portion of that question I answer, not the remotest intention of simulating their brand, nor was there a shadow of thought that any portion of their trade could be diverted thereby, nor was it considered possible that by such means any person
550 whatever could be induced to purchase Cumberland sheeting under the impression that they were buying Lawrence Manufacturing Company's goods. Nothing akin to such a proposition was ever thought of by the Tennessee Manufacturing Company in affixing such a mark to their Cumberland sheeting.

Q. 237. By whom are your brands determined and selected?

Ans. By myself.

Q. 238. For what purposes are four-yard brown cotton sheetings consumed?

Ans. They are used for a very great variety of purposes, among which may be enumerated the purposes of making underwear for men and women and children, shirts, sheeting, linings, and facings, in tailoring and clothing establishments, and for making flour sacks and meal bags, and for almost any purpose that medium-weight cotton goods can be used.

Q. 239. For what purposes are five-yard brown cotton sheetings used?

Ans. For the same general purposes, varied according to the taste and fancy of the consumer.

Q. 240. State whether or not there is any competition between four and five yard brown cotton sheeting.

Ans. Competition being rather an indefinite term, as universally used, it would be difficult to answer this question in a restricted sense; there is competition between four-yard and five-yard sheeting wherever they may be used for the same purpose.

Q. 241. State whether or not they are in competition when laid on the counter for sale to actual consumers.

Ans. There is competition between them under such circumstances.

Q. 242. Is there any sense in which the word "competition" is used where they are not competitors; and, if so, explain?

Ans. The competition between four-yard and five-yard goods can be said to exist just to that degree indicated by the wants and desires of the buyer. The use of goods being determined, the fancy of the buyer has a large part to play in the question of preference between four-yard goods and five-yard goods, determined to a large extent by the appearance of the goods. Competition in a particular sense, referring merely to a question of price, is determined largely in favor of five-yard goods by reason of the fact that it can be constructed and manufactured so as to sell profitably at a much lower

figure. In this sense, where the question of weight is not much considered, the competition between five-yard goods and four-yard goods must necessarily be very severe, by reason of the low price of the former, and sales will be determined always largely by a question of price.

551 Q. 243. By what name are the brown sheetings which you brand "L L" known in the trade?

Ans. They are branded and known in the trade as "Cumberland Sheeting 4-4 L L."

Q. 244. What is the weight of said goods?

Ans. The said goods are made to weigh four yards to the pound, or, speaking more plainly, four ounces to the yard. There is always, however, more or less deviating from exactness in this weight, which may at times be on the heavy side and at other times on the light side, the variation caused largely by atmospheric conditions and the weather.

Cross-examination by Mr. RAINEY:

Q. 245. Such variations are incident in the manufacture of all cotton goods, are they not?

Ans. Necessarily so, but they may be aggravated by lack of attention and failure to regulate the proper manufacture of the goods.

Q. 246. What is your present age?

Ans. I was born in 1850 and am, therefore, 36 years old.

Q. 247. Had you any experience in the handling of cotton goods previous to your connection with defendant company?

Ans. Yes, sir; I have had experience before, having been connected previously with a wholesale dry-goods establishment in the city of Nashville, on the Public Square, the firm being Searight, Thornton & Company.

Q. 248. What were your duties while connected with that firm?

Ans. I was a young man just entering business and do not suppose my duties could be very well defined. They were generally discharged in the handling of goods, keeping stock clean and arranged, such as is required of a young man about a wholesale establishment.

Q. 249. Did you have anything to do with the selling of brown sheeting?

Ans. There was no duty expected of me, though at times I suppose I made sales, but not as a matter of duty, and, if done, the time is so remote that no definite impression is left upon my mind in regard to it.

Q. 250. Then your familiarity with the different grades of brown cotton, their different weights, and the manner in which they are respectively marked to distinguish such weights, has been acquired since your connection with the defendant company. Am I correct?

Ans. My familiarity began with my earliest connection
552 with cotton goods, and may be said to have continued up to the present time, but my present knowledge of cotton goods is the result of my more recent experience.

Q. 236. Did you or not have any intention of simulating complainant's brand for the purpose of taking any part of their trade by inducing purchasers to think that they were getting goods made by the Lawrence Manufacturing Company when buying your goods branded "Cumberland sheeting L L?"

Same objection and also because it is suggestive.

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Q. 250. Then your familiarity with the different grades of brown cotton, their different weights, and the manner in which they are respectively marked to distinguish such weights, has been acquired since your connection with the defendant company. Am I correct?

Ans. My familiarity began with my earliest connection
552 with cotton goods, and may be said to have continued up to the present time, but my present knowledge of cotton goods is the result of my more recent experience.

Q. 251. How many different grades of brown cotton sheeting does the defendant company manufacture?

Ans. The defendant company manufactures between fifty and sixty varieties of cotton goods, among which are six varieties of 4-4 sheeting, 36 inches wide.

Q. 252. Are these six different varieties of 4-4 goods of the same weight?

Defendant excepts to the foregoing as irrelevant and incompetent.

Ans. They are not.

Q. 253. Give the different weights of these goods.

Ans. 2.85 yards to the pound, 3 yards to the pound, 3.40 yards to the pound, 4 yards to the pound, 4.50 yards to the pound, and 5 yards to the pound.

Q. 254. Is it not a fact that each of these several grades or weights of goods is sold by your company at a different price?

Ans. It is a fact.

Q. 255. In the sense of being different in price, do these respective grades come in competition in the market?

Ans. They do, controlled by the fancy and wants of the consumer.

Q. 256. With what market do you deal, the jobbing or the retail market?

Ans. Our dealings are principally with exclusive wholesale dealers or jobbers, but to some extent we deal with merchants who sell goods at both wholesale and retail. We have no dealings with consumers as a trade.

Q. 257. Is it not a fact that the jobber or the merchant with whom you may deal knows the distinction between these several grades of goods?

Ans. It is supposed to be the fact.

Q. 258. When a jobber desires from your company a specific grade of goods does he not order such a grade?

Ans. He does, by ordering a certain brand.

Q. 259. The prices of your different brands are different, are they not?

Ans. They are.

Q. 260. Now, will you please answer again question 255, and state whether to the jobber there is any competition between the 2.85 yard goods and the five-yard goods?

Ans. I would answer that question generally in the affirmative, that there is always competition between two articles that may be used for the same purpose, but, speaking from the experience
553 of the trade, a jobber generally knows what grade of goods he wants, and is controlled in his purchases by the wants of his trade, and it is rare that any one wanting as heavy a weight as 2.85 will consent to take as light a weight as five yards.

Q. 261. Consider the last question repeated by substituting four-yard goods for 2.85; what would be your answer?

Ans. My answer would be that competition between four-yard goods and five-yard goods is necessarily closer than between five-

yard goods and goods weighing 2.85. As you lessen the difference in weight you create a closer competition by reason of drawing the purposes and uses of the goods closer together.

Q. 262. The prices of the four and five yard goods in the market are not necessarily dependent upon each other?

Ans. The prices of four-yard goods do not necessarily have any connection with the prices of five-yard goods. Generally speaking, the market price of any article is controlled by supply and demand, but technically speaking prices on cotton goods are determined primarily by weight, controlled to some extent by the construction of the goods, the fineness of the yarn, and the general finish. I would therefore answer that a variation in price for four-yard goods would in all probability create a variation in price for five-yard goods, when the influence is a question of the cost of raw material.

Q. 263. Is it not a fact that the market price of five-yard cotton goods is often affected by the supply and demand?

Ans. No more than it is a fact that the price of all weights of cotton goods is at times affected by the question of supply and demand.

Q. 264. Would not an over-supply of five-yard goods affect the price of that grade of goods without necessarily affecting the price of four-yard goods?

Ans. Yes; such are the conditions of trade, but in such case the competition between four-yard goods and five-yard goods is all the more severe by reason of five-yard goods being sold for relatively a much lower price.

Q. 265. You do not wish to be understood as saying that in the trade there is no sense in which these two grades of goods do not come in competition, or is there any sense in which they fail to come in competition?

Ans. I have stated that in my estimate there is more or less competition between these two grades of goods at all times, varying in degree by the peculiar notion of the buyer. There is only one sense in which I can suppose there is no competition between these two weights of goods, and that is where the use for the one is unsuitable for the other. Where either may be used there is necessarily competition. At the same price any one having a knowledge of the value of a cotton fabric and being willing to use a coarse cotton goods such as the defendant company manufactures, the heavier goods would always be preferred, but where a lighter goods is desired the lower price proves often more attractive.

554

Q. 266. For how long has your company been manufacturing the six grades of brown cotton goods that you have mentioned?

Ans. The Tennessee Manufacturing Company began to manufacture goods of this general class in the beginning of their operations, and have varied the production and the weight as the trade has demanded, and the six grades of goods have been created at different times during the period of the company's existence. No single date can be made to apply to all six of the grades.

Q. 267. How long was it after your connection with the company began before you became familiar with the trade, as mentioned by you in the opening of your testimony?

Ans. My familiarity with the trade began with my connection with the trade, and my conviction is that it has been a matter of progression ever since.

Q. 268. Has it not been part of your duty to travel throughout the country to visit the different jobbers and cotton mills?

Ans. It is my duty to exercise a general care and supervision over the business of the company. At any time that I feel it to be my duty to travel anywhere and see anybody I consider it my duty to go, but I have no specific duty imposed upon me of calling upon the jobbing trade and cotton mills.

Q. 269. Is it not a fact that you have frequently, beginning with your early connection with the defendant company, visited the jobbers and cotton mills throughout the country?

Ans. It is a fact that I have frequently visited numerous jobbers and numerous cotton mills in the United States.

Q. 270. For how long a time have you known that the complainant company branded some of its cotton goods with "L L?"

Ans. I cannot answer that question with exact date; generally I have known it for many years; I should say six years, more or less.

Q. 271. With which section of the country does your company sell its brown cotton sheetings to the greatest extent?

Ans. This section of the country, Nashville, Tennessee, inasmuch as we sell over 50 per cent. in this market.

Q. 272. Can you give or fix the time when you first branded your 4-yard goods with "L L?"

Ans. I cannot with day and date; it has been possibly eighteen months or two years ago.

555 Q. 273. How did you brand your 4-yard goods previous to the adoption of "L L?"

Ans. Exactly as now, minus the "L L," the brand being "Cumberland Sheeting, 4-4;" "Cumberland" being in one line, with an open-faced letter, "sheeting" being in a line immediately under it, and "4-4" immediately under "sheeting."

Q. 274. Is it not a fact that, during the past six years, you have been familiar with the 4-yard brown cotton sheetings manufactured by the complainant and branded with "L L?"

Ans. It is a fact that I have known of such sheeting on the market; my knowledge that it was made by the Lawrence Manufacturing Company is merely a matter of general reputation.

Q. 275. You have known this for the past six years, have you not?

Ans. As stated previously, more or less.

Q. 276. During the time of your connection with the defendant company you have kept yourself informed of the market prices of 4-yard brown cotton goods, have you not?

Ans. I have attempted to keep up with the market price of such goods since my connection with defendant company.

Q. 277. You have also kept yourself informed or have been familiar with the most prominent brands or letters with which brown sheetings have been stamped, have you not?

Ans. I answer, yes; restricted to such brands as may have come in direct competition with the goods manufactured by the defendant company.

Q. 278. Does your company subscribe for any pamphlet or periodical that gives the market price and the different brands of brown sheeting; if so, what?

Defendant excepts to parol evidence of the contents of any written or printed book, as the book itself is the best evidence.

Ans. It does.

Q. 279. What?

Ans. A newspaper called the "Commercial Bulletin." Our company has subscribed for that paper for ten years, more or less.

Q. 280. Has your company taken any other such publication; and, if so, what, during your connection with the company?

Ans. It has, receiving, on subscription, at different periods of time during the past ten years, Mackey's Weekly Price List, published in New York, the Financial Chronicle, Hunt's Merchants' Magazine, and the United States Economist and Dry Goods Reporter, all published in New York, and the St. Louis Dry Goods Reporter, published in St. Louis, Mo.

Q. 281. Is it not a fact that these several periodicals give the prices of, and the different brands or letters of, the most
556 prominent brown cotton sheetings, including such goods made by the complainant company and stamped "L L?"

Ans. No.

Q. —. Do you mean by "no" that these periodicals do not give the prices of brown cotton sheetings or the leading brands thereof as manufactured in this country?

Ans. I mean that these periodicals referred to do not quote the prices of the goods made by this defendant company, understanding your question previously asked to refer particularly to goods made by this defendant company. The St. Louis Dry Goods Reporter has quoted our goods in the past and may or may not now.

Q. 283. Now, understanding the previous question, No. 281, to refer to complainant's goods in the latter part thereof, what is your answer?

Defendant excepts to this foregoing question on the ground that it is too general, not specifying what particular issue is meant; second, on the ground that it is new matter and is not cross-examination upon the subject-matter contained in the direct examination, and, third, because it is not competent to show the contents of a written or printed book by parol evidence, the printed matter itself being the best evidence.

Ans. I would not be willing to swear that they have invariably given the prices and different brands or letters of the cotton goods made by the complainant company, but, answering from my general

impression, I should say that the papers mentioned have quoted, giving particulars, all the goods made by the complainant company, including the "L L."

Q. 284. Is it not a fact that your company sells its four-yard sheeting to a large extent in St. Louis market?

Ans. Yes, in proportion to the quantity of this grade of goods made.

Q. 285. Such goods were sold there before you adopted the brand of "L L," were they not?

Ans. Yes.

Q. 286. To what jobber have you sold mostly your four-yard goods in St. Louis?

Ans. Samuel C. Davis & Co.

Q. 287. Is it not a fact that you stamp for this firm your four-yard goods with a private brand, accompanied with "L L?"

Ans. It is not a fact.

Q. 288. Do you not stamp such goods for this firm with the words "Our Own" over the letters "L L?"

Ans. It is not a fact, and never has been the case.

Q. 289. How do you brand your "L L" sheetings you sell to this house?

557 Ans. Just as we brand all the goods we make of this grade, Cumberland sheeting 4-4 L L.

Q. 290. Is it not a fact that before you adopted the use of "L L" on your four-yard sheetings that customers of yours requested it done?

Ans. It is a fact that it was suggested to us to affix "L L" to our Cumberland stamp by our customers, the reason being stated that "L L" had grown to be accepted by the trade as a distinctive mark for four-yard goods, and inasmuch as Cumberland sheeting came under that general class, it should carry the distinctive mark for four-yard goods.

All the answer after the words "our customers" is objected to by complainant's counsel as not being responsive to the question and volunteered by the witness.

Q. 291. And it was in pursuance of such suggestion that you adopted "L L" on your goods?

Ans. It was.

Q. 292. At the time of such suggestion did your customers, or either of them who made such suggestions, say anything about Lawrence "L L?"

Ans. They did not.

Q. 293. Did you ever hear "L L" spoken of before you adopted it on your goods with reference to the Lawrence goods?

Defendant excepts to this question because it does not specify the time and the place and the person in respect to which such conversation is called for.

Ans. I can answer that question both affirmatively and negatively, according to the special significance given to it; I have heard the

Lawrence L L goods spoken of previous to adopting "L L" as a part of our brand; I have never heard "L L" spoken of in connection with the Lawrence goods with any special or peculiar significance, as the question might imply, other than that used in connection with all goods branded "L L," many of which are well known in the trade.

Q. 294. Is it not a fact that your customers frequently order your four-yard goods simply as "L L" sheeting?

Ans. Never; our orders always come "Cumberland sheeting," "Cumberland 4-4," "Cumberland L L," varying according to the source from whence the order comes.

Redirect examination by Mr. DICKINSON:

Q. 295. State the time, as near as you can, when you first received any information that "L L" was claimed by the complainant as a trade-mark, or that complainant claimed any peculiar right to the use of it.

Ans. The first intimation I had of such a claim was upon receiving notification that the Lawrence Company proposed to bring suit based upon said claim, which was about six months ago.

558–560

Q. 296. At the time you began to use "L L" were you or not familiar with "L L" used in connection with other brands besides the Lawrence?

Ans. I was; several of them.

Recross-examination by Mr. RAINEY:

Q. 297. From whom did you get the notification referred to in your answer to question 295, and when with reference to the time of bring- this suit?

Ans. My first notification came from M. P. Donahue, of Samuel C. Davis & Co., of St. Louis, Mo., that such a suit was in prospect; that Mr. Rainey, counsel for the complainant, had so informed him and would call on me, and in a very short time thereafter—one or two days—Mr. Rainey did me the honor to call, and gave formal notice, and immediately after his visit the bill was filed and the suit began.

Q. 298. Allow me to refresh your memory. Did your company not receive a communication from some person connected with the Aurora Cotton Mill, of Aurora, Illinois, that the complainant had sued that company for using "L L" and requesting your company to join in the defense of the suit against it?

Ans. My memory cannot be refreshed. We never received communication from the Aurora Cotton Mills of any sort previous to the bringing of this suit.

Q. 299. Have you read the testimony taken by the complainant in this cause?

Defendant excepts to the foregoing question as irrelevant and improper cross-examination.

Ans. I have read some portions of it, but not all of it.

Re-redirect examination:

Q. 300. Have you based any of your answers in your foregoing deposition upon any information derived from reading such proof? Ans. No, sir.

GEORGE M. GOODWIN.

SEPTEMBER 14, 1886.

Subscribed and sworn to before me this 14th day of September, 1886.

[SEAL.] J. T. SPAULDING,
Notary Public.

My fee, $9, paid by the defendant.

J. T. SPAUDING, *N. P.*

561 Circuit Court of the United States, Northern District of Illinois.

LAWRENCE MANUFACTURING COMPANY

vs.

AURORA COTTON MILLS.

In pursuance to agreement of parties the deposition of L. K. Scott is taken before F. H. Thatcher, a notary public in and for the county of Kane and State of Illinois. Complainant appears, by its counsel, Mr. W. G. Rainey, and defendant by its counsel, Hopkins, Aldrich & Thatcher.

L. K. SCOTT, being duly sworn, testified as follows:

Direct examination by Mr. A. J. HOPKINS:

Ques. 73. What is your name, age, occupation, and place of residence?

Ans. L. K. Scott; 33 years of age; dry-goods merchant; residence, city of Aurora, Illinois.

Ques. 74. How long have you been engaged in the dry-goods business?

Ans. I have been in the dry-goods proper eight years, and for five years prior thereto was in a general store.

Ques. 75. During the 13 years you mention have you had experience in buying, selling, and handling brown sheetings; and, if so, to what extent?

Ans. Yes, sir; for the past four years I have done all the buying for our store of domestic goods, including brown sheetings, and prior to that I was stock-keeper of the brown sheeting, and domestics.

Ques. 76. Do you know a sheeting in the market of four yards to the pound; and, if so, how many different manufactories, to your knowledge, are engaged in producing that class of sheeting?

Ans. There is quite a number; the Atlantic "L L," the Lawrence "L L," the Badger State "L L," Beaver Dam "L L," the Shawmut

"L L"—the Shawmut they class as weighing a little more than the Lawrence—the Aurora "L L."

Ques. 77. What does the "L L" mean in trade, as you understand it?

562 Ans. In our experience it denotes a certain grade of brown sheeting, always running about the same quality.

Ques. 78. If you want the "L L's" of any particular manufacture how do you give your orders?

(Question objected to as incompetent and immaterial.)

Ans. By designating the name of the particular brand that I want.

Ques. 79. In the trade how is this grade or quality of sheeting manufactured by the Lawrence Company known?

Ans. It is known as the Lawrence "L L."

Ques. 80. What company manufactures the Shawmut "L L?"

Ans. I have always understood that it was the seconds of the Lawrence "L L's" to work off surplus stock.

Ques. 81. If the trade wanted that grade of sheeting manufactured by either of the manufacturing companies above mentioned by you how would that be designated? Explain fully.

(Question objected to as incompetent and immaterial.)

Ans. They would have to call for the brand by its name, saying that they wanted either the Aurora "L L," the Lawrence "L L," or either of the other "L L's."

Ques. 82. You spoke of the Atlantic "L L;" have you had any experience with that grade of sheeting in your trade?

Ans. Yes, sir; I think I have it in stock to-day.

Ques. 83. What is the fact as to whether or not the Atlantic "L L's" come in competition in the trade with the "L L's" of the other manufactories named by you? State fully.

Ans. Yes, sir; it does; in fact, we have been getting a little more for that grade of sheeting than for the others.

Ques. 84. On what class of goods in the trade do you find the letters "L L?"

Ans. It is on a medium fine sheeting, weighing about four yards to the pound.

Ques. 85. Do the letters "L L" on sheeting indicate in the

563 trade anything other than the grade or quality of the goods?

(Objected to as leading.)

Ans. In our experience it has had reference to the quality of the goods.

Cross-examination by Mr. W. G. RAINEY:

Ques. 86. How long have you handled sheetings stamped with "L L?"

Ans. I think my first experience was with "L L" sheeting, but it has been more in the last six or seven years that I have known

them, simply because my first experience was more in boots and shoes and groceries than dry goods.

Ques. 87. What "L L's" did you first handle?

Ans. We had the Lawrence "L L" in stock, the Atlantic "L L," and I am not so positive about the other brands, because our stock was limited. This relates to my first experience.

Ques. 88. Will you state that thirteen years ago, when you first had experience in the business, that you handled and sold both the Lawrence and Atlantic "L L's?"

Ans. Yes, sir; I think there is not the least doubt of it.

Ques. 89. When did you begin to handle and sell other "L L's" mentioned by you?

Ans. I do not know as I could give any particular date, but it is since I have been buying goods for our firm.

Ques. 90. Have you had in stock all the several "L L's" you have mentioned all the time since you have been purchasing for your house?

Ans. No, sir; not all the time.

Ques. 91. Mention those you have had all the time, if any.

Ans. I do not know that I have had all the brands all the time, because for the reason if they had not them in wholesale stock I would take one of the other "L L's."

Ques. 92. Have you not kept the Lawrence "L L" all the time?

Ans. No, sir.

564 Ques. 93. You have purchased the Lawrence "L L's" when you could get them, have you not?

Ans. I do not know that I have given them any great preference.

Ques. 94. Since when did you first handle any other four-yard goods branded "L L" beside the Lawrence?

Ans. Outside of my first experience that I before mentioned we have had other "L L's" in stock beside the Lawrence. That is a pretty hard matter to fix a date, although it was seven or eight years ago.

Ques. 95. This you are positive about?

Ans. Yes, sir.

Ques. 96. From whom have you purchased such goods for the past seven or eight years?

Ans. As I before stated, I have been purchasing those goods for four years of Marshall Field, John V. Farwell, Carson, Pirie, Scott & Co. Previous to that I was merely stock-keeper, and did not do the buying.

Ques. 97. Then your familiarity with the trade extends only back for four years?

Ans. Personally, yes, sir; but with the different grades of goods I was full as familiar with for the four years previous to that.

Ques. 98. With all the "L L's" you have mentioned?

Ans. You could hardly class the Aurora "L L's" in with that, because they have not been manufactured that long.

Ques. 99. Prior to the past four years you have no personal experience with how such goods were spoken of in the trade?

Ans. Well, my experience as stock-keeper required me to be as well posted as to the quality of goods as since, because our buyer depended upon buying what we wanted for our stock.

Ques. 100. Last question repeated.

Ans. I might say that personally I was not acquainted with the trade at that time, but still I could be posted as to qualities.

565 Ques. 101. Will you answer, yes or no, whether prior to four years past you had any personal knowledge as to how the trade spoke of such goods you have been talking about?

Ans. The wholesale trade, no.

Ques. 102. With what section of the country has your familiarity with the trade extended during the past four years?

Ans. It has, of course, been the Western.

Ques. 103. What territory do you wish us to understand by the Western?

Ans. Such territory as Marshall Field, John V. Farwell, or other wholesale houses of Chicago would naturally sell.

Ques. 104. Do you wish to be understood as saying that you have a personal knowledge of the trade and how they talk about these goods throughout the entire territory reached by these jobbers?

Ans. Of course I have not a personal knowledge of those things, only as I have talked with the general salesmen of these different houses.

Ques. 105. Will you say that you have talked with the general salesmen of those different houses as to the significance or trade meaning of "L L?"

Ans. I have in this way: In calling for sometimes Lawrence "L L" or Beaver Dam "L L" I have been told that they were out and had none in stock, and would ask me if some other "L L" would not do just as well; that they were just the same. I speak of the Lawrence and Beaver Dam, not as referring to those specific brands, but as designating some one brand I wanted to call for that my stock needed.

Ques. 106. When you would ask for such "L L" goods the salesman would understand what particular brand you wanted, would he not?

Ans. If I designated the name.

Ques. 107. Did you never hear such goods spoken of as simply "L L's?"

Mr. Hopkins asks, "What do you mean by that?" To which Mr. Rainey said, "Now, Mr. Hopkins," when the witness said, "I was about to ask the same question."

566 Ques. 108. Question repeated.

Adjourned at 12 o'clock noon of said day.

Resumed at 1.30 p. m. of said day.

Ans. Of course you have reference to the brands we have spoken of before? If you do, why, yes, sir.

Ques. 109. Should a travelling salesman from either of the houses mentioned by you come into your store and ask you if you wanted any "L L's" you would understand what he meant, would you not?

Ans. Yes, sir; and if I wished any "L L's" I should designate which brand I wanted, if I wished any.

Ques. 110. Before you heard of the Badger State, Beaver Dam, or Aurora "L L" you would understand such a question to mean Lawrence "L L," would you not?

Ans. Of course, before those goods were made I might, but since my days in active mercantile life those names have been familiar in the trade.

Ques. 111. What do you mean by the trade?

Ans. Men I buy goods of.

Ques. 112. Then you mean by the trade the houses of Marshall Field & Co., John V. Farwell & Co., Carson, Pirie, Scott & Co., do you not?

Ans. Yes, sir; or any other wholesale house with whom we deal.

Ques. 113. Do you buy "L L" sheetings from any other houses than the three mentioned; if so, from whom?

Ans. I think we have bought some from Jas. H. Walker & Co.

Ques. 114. Then you mean these four houses as the trade when speaking of "L L" goods, do you not?

Ans. Yes, sir; although I could buy them of any of the houses we buy goods of in New York.

Ques. 115. My question is, what do you mean by the trade in your previous answers in talking about "L L" sheetings?

Ans. I have reference to Chicago houses.

567 Ques. 116. Do you wish to be understood that "the trade," as represented by these four houses, understand that "L L" means no more than a particular quality of goods?

Ans. I have been so educated by them in my own experience.

Ques. 117. Will you state it as a fact that all of these houses do not understand anything more than "goods of a particular quality" when "L L" is mentioned?

Ans. I am not prepared to give the expression of any wholesale house; all I can say is that individual salesmen representing such houses, whom I have come in contact with, have so made me understand.

Ques. 118. Please mention the name or names of the salesmen at these respective houses who have stated to you that "L L" only means "goods of a particular quality."

Ans. L. McWilliams, of M. Field's; George Harvey, of Farwell's; R. H. Moulton, of Carson, Pirie & Scott's; Hastings, of James H. Walker. I think his first name is Henry.

Ques. 119. Give the times and places when you heard these men say that "L L" only meant goods of a particular quality, and state the circumstances why they made such statements to you.

Ans. I would most certainly have a powerful memory if I could remember dates and times of all things that were talked and mentioned in reference to grades and qualities of goods with those gentlemen. I might say in answer to the latter part of the question that

very often the thing happens that they would be out of a certain brand of goods, and will show me some other make equally as good to take the place.

Ques. 120. That is what you mean, then, by saying that these men have very often told you that "L L" only means "goods of particular quality," is it?

Ans. Yes, sir; with my own knowledge.

Ques. 121. Now will you undertake to say that these men understand "L L" only to mean the same that you have stated that you understand it to mean?

568 Ans. Yes, sir; unless they think different from what they talk.

Ques. 122. I repeat a former question in substance: Will you swear that these men, or either of them, ever told you that "L L" only means goods of a particular quality? If so, state which one, and when, and where.

(Defendant objects to the question because it has already been answered.)

Ans. As I have said before, I think each one has told me; I am not so sure about Mr. Hastings; and as to date and place, it is impossible to give them.

Ques. 123. Did they, or either of them, use the language so often repeated in my question—*i. e.*, that "L L" only means goods of a particular quality?

Ans. That would be the meaning of what they would say; perhaps not in so many words, but that is what they would lead me to infer from their language.

Ques. 124. Would not these be the facts of the case: You would ask for the Lawrence "L L," or some other "L L," and they would say "We are out of that, but have another 'L L' just as good," or this in substance?

Ans. Yes, sir; without giving the Lawrence "L L" any more prominence than any of the others.

Ques. 125. Are you a stockholder in the Aurora Cotton Mill Company, or in any manner interested in it?

Ans. No, sir.

Ques. 126. You have been informed of the nature of this suit, and what it is desired to prove by you, have you not?

Ans. No, sir. I knew there was a suit, but did not know that I was to be a witness.

Ques. 127. Why did you come here if you did not know you were to be a witness?

Ans. Well, I might have answered that, that I did not know that I was to be a witness until they came to me this morning and got me for a witness, and then I did not know what was required of me.

Ques. 128. Do you wish to be understood as saying that

569 "the trade" always speaks of, orders, buys, and sells four-yard brown sheetings, such as we have been talking about, by designating the name of the particular manufacture desired, or may they not sometimes speak of, buy, and sell the same as "L L?"

Ans. I do not know how the order, but I know that they do sell in that way. If I should order a bale of "L L's" without designating the brand I have no doubt but that a return letter would come asking me which one of the "L L's" I wished.

Ques. 129. Will you say as a fact that the trade always speak of, orders, buys, and sells such goods by designating the name of the manufacture wanted?

Ans. I do not say that they do, but I should think it would be a necessity.

Ques. 130. Will you say as a fact that such goods are never spoken of, ordered, and sold simply as "L L" and without mentioning any manufacture?

Ans. Never to me.

Ques. 131. Then your deposition should be qualified and confined to your personal experience?

Ans. I have endeavored all through my testimony to only give knowledge of the facts as I have heard them, along with my own experience.

Ques. 132. Last question repeated.

Ans. Yes, sir; with these parties.

Redirect examination by Mr. A. J. HOPKINS:

Ques. 133. How does the Aurora "L L" compare with the Lawrence "L L?"

Ans. I consider it equally as good.

Ques. 134. Is it or not considered a better quality of sheeting?

Ans. I consider it full as good. I do not know as there is much difference in the two grades.

Recross-examination by Mr. RAINEY:

Ques. 135. How long have you handled the Aurora "L L's?"

570 Ans. I can't tell that exactly; we handled about the first "L L's" the mill made.

Ques. 136. Since then have you handled any other "L L's;" if so, which?

Ans. Yes, sir; all these which have been spoken of, except the Shawmut "L L."

L. K. SCOTT.

STATE OF ILLINOIS, } ss:
County of Kane, }

I, Frank H. Thatcher, notary public in and for the county of Kane, in the State of Illinois, hereby certify that the foregoing deposition of L. K. Scott was taken before me by consent of the parties; that at the taking of the deposition of said L. K. Scott complainant was represented by Mr. W. G. Rainey and the defendant by Mr. A. J. Hopkins; that before the taking of said deposition the witness was duly sworn by me, and that the said deposition was written out by me and signed by the witness in my presence.

I further certify that the fees for taking said deposition are $4.00, and were not paid.

Witness my hand and notarial seal this 23d day of October, A. D. 1886.

F. H. THATCHER, [SEAL.]
Notary Public in and for the County of Kane and State of Illinois.

571 Circuit Court of the United States, Northern District of Illinois. In Chancery.

LAWRENCE MANUFACTURING COMPANY

vs.

AURORA COTTON MILLS.

In pursuance to agreement of said parties the deposition of Ernest S. Hobbs is taken on behalf of defendant before Frank H. Thatcher, a notary public in and for the county of Kane, State of Illinois.

Complainant appears by its counsel, Mr. W. G. Rainey, and defendant by its counsel, Hopkins, Aldrich & Thatcher.

ERNEST S. HOBBS, being duly sworn, testified as follows:

Ques. 137. What is your name, age, occupation, and place of residence?

Ans. My name is Ernest S. Hobbs; age, 36; Aurora, Illinois.

Ques. 138. What position do you hold, if any, with the defendants?

Ans. I am superintendent of their mill.

Ques. 139. How long have you held that position?

Ans. Since March 15, 1884.

Ques. 140. Were you engaged in the manufacture of cotton goods prior to your engagement with the defendant?

Ans. I was.

Ques. 141. Where, for whom, and in what capacity? State fully.

Ans. With the Leigh M'f'g Co., of Boston, Mass., during 1874 and 1875, as superintendent of their mills; then with the Matthews Cotton Mills, of Selma, Alabama, until March, 1884, as superintendent of that mill.

Ques. 142. What is the fact as to whether those two cotton manufacturers, during the time you mentioned, were engaged in the manufacture of brown sheeting?

Ans. They were engaged in the manufacture of such sheeting.

572 Ques. 143. From your several positions above mentioned, what have you learned in the way of experience and observation as to the working of other mills in the country as to the manufacture of brown sheeting.

Ans. Brown sheeting is made essentially alike by all mills, the difference in kind being merely a difference in the number of the yarn used and the closeness with which the fabric is woven.

Ques. 144. What is the fact as to whether you have become

acquainted with the various kinds of sheetings manufactured by the different cotton mills in the United States.

Ans. I would not say, I am acquainted with them all, but I have somewhat extended knowledge.

Ques. 145. Name some of the mills whose manufacture you are familiar with.

Ans. Pepperel Mills, of Biddeford, Maine; the Laconia Mills; the Androscoggin Mills, of Lewiston, Maine; the Lockwood Mills, of Waterville, Mains; the Cabbot M'f'g Co., of Brunswick, Maine; the York M'f'g Co., of Saco, Maine; the Atlantic Mills, Lawrence, Mass.; the Tremont and Suffolk Mills, of Lowell, Mass.; the Boot, of the same place; the Lawrence M'f'g Co., the Evansville Cotton M'f'g Co., the Pacolet M'f'g Co., the Graniteville Mills, the Janesville Cotton Mills, Beaver Dam, the Tennessee M'f'g Co.

Ques. 146. Are you familiar with the stamp or trade marks or devices employed to designate certain grades of sheeting manufactured by several of the companies named by you?

Ans. To some extent.

Ques. 147. Do you know the trade-mark used by the Evansville people on their four-yard sheeting?

Ans. They use Crescent City "L L" for the present.

Ques. 148. What does the "L L" indicate on the sheeting of the Evansville people?

Objected to by Mr. Rainey as incompetent and irrelevant.

573 Ans. I believe it simply is used to designate one of the grades of sheeting made by them.

Ques. 149. Don't you know?

Objected to on the same ground as before.

Ans. Yes.

Ques. 150. What does it then indicate? Explain fully.

Same objection.

Ans. It indicates a grade known as weighing about four yards to the pound.

Ques. 151. I wish, Mr. Hobbs, you would describe fully in your answer the trade-mark used by the Evansville people on the grade of sheeting of four yards to the pound.

Same objection.

Answer. The caption, Crescent City Mills, is taken from the name of the town that has been called the Crescent City. The figure of the crescent simply emphasizes the idea expressed in the words; the letters "L L" are used to designate the quality of the sheeting.

Ques. 152. Is the trade-mark of the Evansville Co. of such a character that it would be mistaken in the trade for the trade-mark of the same grade of sheeting of the Lawrence Co., or the Aurora Co., or any other company using the letters "L L" on a certain grade of sheeting?

Same objection.

Ans. It is not; the design being expressly or for the express purpose of preventing such confusion.

Ques. 153. Is the company of which you say you are superintendent manufacturing a grade of sheeting upon which the letters "L L" are stamped?

Ans. It is.

Ques. 154. Is that company manufacturing more than one grade of sheeting?

Ans. It is.

Ques. 155. Upon what grade of sheeting are the letters "L L" stamped?

Ans. Upon the grade weighing four yards to the pound.

Ques. 156. Has your company, the defendant in this case,
574 a trade-mark for its sheetings? And, if so, state fully what it is.

Same objection.

Ans. Well, in the case of the four-yard sheeting we adopted the word "Aurora," with the picture of a rising sun immediately below it, the word "fine" immediately under, and the word "sheetings" at the top of a monogram A. C. M., then the letters "L L" to denote the grade; all of the same constitutes our trade-mark.

Ques. 157. Does that trade-mark resemble the trade-mark of the Lawrence Co.?

Ans. Not to my mind.

Ques. 158. What is the trade-mark of the Lawrence Co. on the same grade of sheeting?

Ans. It has the words "Lawrence" and "sheetings" arranged in a noble form, with the word "mills" in the centre, a crest of a bull rampant, or a bull's head, and the letters "L L."

Ques. 159. Is there any difference in the kind of lettering used by the Aurora Co. and the complainant, the Lawrence Co.? If so, explain what the difference is.

Ans. The Aurora Cotton Mills use what is known as the ornamental block lettering, while the Lawrence Mills use the solid letters.

Ques. 160. If the two trade-marks were placed on the counters in any wholesale or retail stores would any person of ordinary intelligence mistake the one trade-mark for the other?

Objected to as leading.

Ans. I think not.

Ques. 161. What do the letters "L L" on sheeting indicate among manufacturers and the trade?

Ans. They indicate a grade or quality of sheeting that weighs about four yards to the pound.

Ques. 162. With those letters standing alone, do they or do they not indicate the manufacturer or origin of the goods?

Ans. They indicate nothing but that the sheeting so stamped is of the four-yards grade or quality.

575 Ques. 163. At the time that the Aurora Co. was organized and commenced the manufacture of "L L" sheetings, as explained by you, was there any intention on the part of you, as the superintendent or the managers of the company, to adopt the trade-mark of the Lawrence Co. or to place the Aurora Cotton Mills product on the market for Lawrence goods?

Same objection and also because incompetent and immaterial.

Ans. There was not.

Ques. 164. How did your company happen to use the letters "L L" on a certain grade of sheeting in connection with the trade-mark above given by you?

Same objection.

Ans. They use the letters "L L" on their four-yard goods for the reason that such 4-yard goods are known to the trade as "L L" goods. I should—that don't fully explain my meaning; I mean that the letters "L L" have been so long used on four-yard sheeting by the different mills manufacturing four-yard sheeting that they convey to the trade the grade and quality of the goods so marked without other explanation.

Ques. 165. And when used in connection with the mill or company manufacturing that grade of goods they indicate what?

Ans. That the goods weigh four yards to the pound or thereabouts.

Ques. 166. Does the Lawrence Co. manufacture more than one grade of "L L" sheeting; and, if so, what names are the grades known in the trade?

Same objection.

Ans. They do; their names are known as the Lawrence "L L" and the Shawmut "L L."

Ques. 167. Has the Lawrence Co. manufactured the Shawmut as long as it has the Lawrence "L L?"

Ans. I don't know.

576 Cross-examination by Mr. RAINEY:

Ques. 168. Are you a stockholder of the defendant Co.?

Ans. I am.

Ques. 169. When was it organized?

Ans. Organized in 1883.

Ques. 170. When did it begin to manufacture brown sheeting?

Ans. Oct. 1st, 1884.

Ques. 171. When did it begin to stamp "L L" on its four-yard goods?

Ans. With the first piece of goods manufactured.

Ques. 172. You were the superintendent of the mills at that time?

Ans. I was.

Ques. 173. You have stated in your direct examination that you were familiar with the several cotton mills in the country. State how you became so familiar with them and their manufacture.

Ans. The familiarity spoken of is the result of study, with a desire to know all that could be learned about my business.

Ques. 174. Would your answer be the same with any special reference to Evansville M'f'g Co.?

Ans. In reference to that company my information has been more minute and particular than that derived from any general observation in other mills.

Ques. 175. How did you obtain such information?

Ans. I have been—I assisted, in other words, in the engineering and building operations at the time that company made additions to its mill and to its manufactured goods.

Ques. 176. Were you in the employ of that company?

Ans. The superintendent of that mill employed me at the time stated.

Ques. 177. When was that and for how long?

Ans. It was during the last three months of 1883 and the
577 first three months of 1884, extending through a period of six months.

Ques. 178. Who was then superintendent of the Evansville M'f'g Co.?

Ans. Mr. R. M. Hobbs, my father.

Ques. 179. Is he now present and has he been present during the taking of your deposition?

Ans. Yes, sir.

Ques. 180. You have stated that you knew the trade-mark of the Evansville Cotton M'f'g Company and have described what you consider was its trade-mark. How do you know that to be its trade-mark?

Ans. I have no special knowledge other than that stated.

Ques. 181. What have you stated to be your knowledge on this point?

Ans. I stated that I knew the trade-mark described to be used by them.

Ques. 182. How do you know what you have described is a trade-mark?

Ans. I understand that any device by constant use by the same party becomes a trade-mark.

Ques. 183. That does not answer my question and the same is repeated.

Ans. I know they put that on the goods manufactured by them.

Ques. 184. That is what you mean, then, when you stated that the word and device described by you in your direct examination as used by the Evansville M'f'g Co. was its trade-mark?

Ans. It is.

Ques. 185. While you were with the Evansville Company was it using the device you have described?

Ans. It was.

Ques. 186. Is it using it now?

Ans. I think so.

Ques. 189. Were you familiar with its manufacturing of brown cotton sheeting at that time?

578 Ans. Somewhat so.

Ques. 190. Did it stamp all its manufacture with the device you have described?

Ans. It did not.

Ques. 191. Did it stamp all its four-yard sheetings with that device?

Ans. I don't know that either.

Ques. 192. What is your recollection of that?

Ans. My recollection is that they did not stamp all of their four-yard sheeting with that device.

Ques. 193. Do you know what the output of the Evansville Cotton M'f'g Co. was at that time? You may confine your answer to four-yard goods.

Objected to as not being proper cross-examination and as being irrelevant and immaterial.

Ans. I do not.

Ques. 194. How many looms were they using at that time on four-yard goods? Give the best impression you have if you do not know accurately.

Same objection.

Ans. I have no definite idea.

Ques. 195. Do you know how many looms they are using now on four-yard goods?

Same objection.

Ans. I do not.

Adjourned until 11 o'clock Thursday morning by agreement of parties.

Examination resumed Thursday morning, Oct. 28th, pursuant to previous agreement.

Same parties as before.

Ques. 196. How long have you been familiar with the significance in the trade of "L L," which you have stated in your direct examination belongs to its use?

Ans. Six or eight years.

Ques. 197. With what "L L" have you been familiar with during these six or eight years?

Ans. Well, with the Atlantic, the Lawrence, the Badger State; that is all I am able to state.

579 Ques. 198. Please repeat what significance "L L" has in the trade when applied to brown sheeting.

Ans. It signifies that the sheeting so marked is of a grade that weighs about four yards to the pound.

Ques. 199. Do you understand that the Atlantic "L L" is a four-yard goods?

Ans. It is.

Ques. 200. Is it so known in the trade?

Ans. It is really in the trade a lighter goods, but is sold as four-yard goods to a great extent.

Ques. 201. I repeat my question; do you understand that brown sheetings in the market branded Atlantic "L L" is a four-yard goods?

Ans. I do.

Ques. 202. How long have you been familiar with other four-yard goods in the trade not branded with "L L?"

Ans. I am not so familiar with those goods as to state any definite time.

Ques. 203. You know that there are in the trade several different manufacturers of brown sheetings that are not branded "L L," do you not?

Ans. I have no certain knowledge of it.

Ques. 204. You do know there are several kinds of brown sheetings, or, rather, several different weights of brown sheetings, do you not?

Ans. I do.

Ques. 205. Do you know of a quality of brown sheeting known in the trade as five-yard goods?

Ans. I do.

Ques. 206. Mention any particular brands that you can think of.

Ans. The Utica Mills, N. Y., manufacturer of five-yard brown sheeting; the Evansville M'f'g Co. manufacture five-yard brown sheeting; the Aurora Cotton Mills manufacture five-yard brown sheeting.

Ques. 207. Is that all you know?

Ans. That is all I can enumerate at the present.

580 Ques. 208. Do these five-yard goods come into competition in the trade with four-yard brown sheeting?

Objected to as not being proper cross, irrelevant, and immaterial.

Ans. I don't know that they do.

Ques. 209. Are they sold at the same price?

Same objection.

Ans. I don't know as to prices of goods.

Ques. 210. You know nothing about the prices of goods?

Ans. I know something, of course.

Ques. 211. What do you know as to the price of four-yard and five-yard brown cotton sheeting? State whether they are the same; and, if not, state which is the higher-priced goods.

Same objection.

Ans. I believe that generally four-yard goods sell at a higher price per yard than five-yard goods.

Ques. 212. Assuming that to be true, would you then say that five-yard goods come into competition in the trade with four-yard goods?

Same objection.

Ans. Not generally.

Ques. 213. Don't you know it to be a well-known fact in the trade that the Atlantic "L L" brown cotton sheetings are known, spoken of, and quoted as five-yard goods?

Ans. I do not so know it.

Ques. 214. Did you never hear it said that they were five-yard goods?

Ans. I don't remember anything about it.

Ques. 215. What brand, if any, has given to the trade the significance that "L L" means four-yard goods?

Ans. Not any one particular brand, but it is so generally used and has been for so long a time so used that any person at all familiar with sheetings so understands it.

Ques. 216. Will you swear it as a fact that no one manufacture or mill has tended to give the trade significance to "L L" which
581 you have mentioned—that is, that it means four-yard goods, more than any other mill or manufacture you have mentioned?

Ans. I do not understand that to be the case.

Ques. 217. In a previous answer you have stated that no particular brand has given to the trade the significance that "L L" means four-yard goods; my last question is, will you swear this to be true as a fact?

Ans. I will, as far as my knowledge is concerned.

Ques. 218. That knowledge is limited, if I understand your previous answers, so far as it refers to four-yard goods, to the Lawrence "L L," Badger State "L L," Aurora "L L's," Evansville "L L's;" is this correct?

Ans. It is not. There are many other brands of "L L" which I have seen, and have some knowledge of, that I can't call to mind just at present.

Ques. 219. Do you come in direct contact with the dry-goods trade who buy and sell "L L" sheeting?

Ans. Not as a salesman, but as the manufacturer usually does with the trade that handles goods manufactured by him.

Ques. 220. Do you sell to the trade yourself?

Ans. Since my connection with the defendants I have sold largely the goods made by them.

Ques. 221. Previous to your connection with defendant's Co. did you come into contact with the trade in buying or selling "L L" goods?

Ans. I did not.

Ques. 222. Then your knowledge as to the trade significance of "L L," which you have mentioned, extends no further back than your connection with defendant's Co.; is that true? If not, state how far back you have such knowledge.

Ans. That knowledge extends back six or eight years.

Ques. 223. You did not obtain such knowledge by handling "L L" sheetings, did you?

Ans. Not by selling directly to the trade myself, but by my contact with the trade as a manufacturer.

582 Ques. 224. Did you ever manufacture any "L L" sheeting before your connection with defendant Co.?

Ans. I did not.

Ques. 225. Did you ever buy or sell any before that time?

Ans. I did.

Ques. 226. For whom, when and where, and what "L L?"

Ans. Bought it for myself; have bought several brands; as to when, it has extended all through my buying of any cotton goods, or rather whenever I have wanted any of those goods for any purpose; as to where, I can't state definitely.

Ques. 227. My question asked you what "L L" you bought.

Ans. I can't enumerate.

Ques. 228. But you do swear as a fact that you have made yourself familiar with "L L" sheeting by purchasing the same, several different brands of the "L L," for your individual use, before your connection with defendant's Co.?

Ans. I did not say that my familiarity with "L L" goods was acquired by any purchases of "L L" goods that I made, but that the familiarity was acquired as a manufacturer of brown sheeting.

Ques. 229. What do you mean, then, by your previous answer to my previous question as to how you obtained your familiarity with "L L" sheetings previous to your connection with defendant's Co?

Ans. I mean that my familiarity with "L L" sheetings previous to my connection with defendant's Co. was obtained through study, in the examination of different cotton goods with a view of selecting some or more as articles of manufacture, in starting new mills, or in changing the manufactured articles of the mills with which I have been connected.

Ques. 230. In what way did you study this question?

Ans. I mean that as a manufacturer I studied it as such. I can't get it no better.

583 Ques. 231. Since you have been manufacturing cotton goods have you not been accustomed to read the different dry-goods periodicals giving the quotations of such goods and the manufactures of the different "L L" four-yard sheetings?

Ans. I have been accustomed to note the prices as they have varied from time to time as they appear in the daily papers.

Ques. 232. Have you not known for six or eight years past of the popularity and reputation in the trade of the "L L" sheetings manufactured by the Lawrence M'f'g Co.?

Ans. I have not known that the "L L" sheetings manufactured by the Lawrence M'f'g Co. have had any peculiar popularity over those manufactured by any other company.

Ques. 233. Will you say, as a fact, that in the trade the four-yard sheetings branded "L L" and manufactured by this company has no greater popularity and is no better known in the trade throughout the country than the Aurora "L L?"

Question objected to as irrelevant, immaterial, and not proper cross-examination.

Ans. It is better known, of course, on account of the longer time it has been known on the market.

By Mr. HOPKINS:

Ques. 234. Is that all of your answer? If not, proceed and answer the question.

Ans. I know nothing of popularity. It would be simply an expression of opinion for me to make a statement.

Ques. 235. I repeat, now, my previous question, and I desire a categorical answer thereto: "Have you not known for six or eight years past of a popularity and reputation in the trade of the "L L" sheetings manufactured by the Lawrence M'f'g Co.?

Objected to as not being proper cross-examination, as irrelevant and immaterial.

Ans. I know that the goods spoken of have been on the market a great many years, but I know nothing of the extent to which they have been manufactured or sold.

Ques. 236. My question is, Mr. Hobbs, and a question that
584 you can answer by yes or no, whether you have known for six or eight years of the popularity and reputation in the trade of the "L L" sheetings made by the Lawrence M'f'g Co.?

Same objection, with additional one that the question is already answered.

Ans. As I understand popularity and reputation, I know nothing of the extent of the popularity or reputation of the goods you mention.

Ques. 237. Did I ask you anything of the extent of the popularity and reputation of these goods?

Ans. I think you did.

Ques. 238. If you so understood the question, allow me to correct you by saying I did not use the word "extent." I simply asked you whether you have known for these years of the popularity and reputation of these goods.

Ans. Not other than is stated.

Ques. 239. Please repeat again how it has been stated.

Ans. It has been stated that I have known the Lawrence M'f'g Co. to have had Lawrence "L L" goods on the market for six or eight years.

Ques. 240. Who designed the device which you have described as the trade-mark of the Aurora Cotton Mills?

Adjourned until 1 p. m.

Examination resumed at 1 p. m.

Ans. The entire board of directors had something to do with it, besides others not interested in our mill.

Ques. 241. Are you one of the directors—were you at that time?

Ans. I was not.

Ques. 242. Who were the directors at that time?

Ans. John Van Nortwick, C. L. Hoyt, A. J. Hopkins, Joseph Reising, Alonzo George, S. F. Hobbs, N. R. Hobbs, C. C. Earle, J. O. Curry, W. W. Bishop, J. J. Davis.

Ques. 243. Were either of these directors at the organization of this company familiar with the manufacture of cotton sheeting; if so, which ones?

585 Objected to as not being proper cross and immaterial and irrelevant.

Ans. I don't know.

Ques. 244. Did you have anything to do with getting up the so-called trade-mark of the defendant's Co.?

Ans. I did.

Ques. 245. What part of it did you suggest?

Ans. No particular part; anything more than a general idea.

Ques. 246. Who suggested putting "L L" on it?

Ans. I don't know who made the suggestion.

Ques. 247. Was it discussed in your hearing?

Ans. I think it must have been.

Ques. 248. Why was it put on the four-yard goods?

Ans. Because the goods are four-yard goods.

Ques. 249. Is that the only reason why "L L" was put on the four-yard goods?

Ans. The only reason known to me.

Ques. 250. Do you stamp all your brown sheetings with the same device as you do your four-yard goods?

Ans. We do not.

Ques. 251. Wherein is it different?

Ans. On some of our sheeting we have the words "Aurora Cottons," with monumental scroll between these words; that is the only difference in our brands,

Ques. 252. Do you put "L L" on any other of your goods than four-yard goods?

Ans. We do not.

Ques. —. How do you fold those "L L" goods?

Objected to as not being proper cross and as being immaterial.

Ans. We fold them once; it is just single fold.

Ques. 253. How wide will the bolt be when folded?

Ans. 18 inches.

Ques. 254. Is it not a fact that the "L L" on those sheetings is stamped below the word "sheeting?"

Ans. It is.

586 Ques. 255. In the same relative position to the word sheeting as upon the Lawrence as they occur on the Lawrence sheetings?

Ans. They are in the same relative position.

Ques. 256. How about the color of the ink, as compared with that of the Lawrence, with which the stamp is made?

Ans. The color is blue; both blue.

Ques. 257. You had a design, then, in placing "L L" on four-yard goods, did you not?

Ans. We did.

Ques. 258. At the time you commenced manufacturing your

"L L" sheetings you knew they would be placed in the market in competition with the "L L" sheetings manufactured by the Lawrence Mills, did you not?

Ans. We did.

Ques. 259. Was it not the expectation of you and those associated with you that the letters "L L" stamped on your goods would attract the attention of the buyer?

Ans. No.

Ques. 260. Did you not suppose and do you not now believe that the "L L" on those sheetings would be seen by the buyer?

Ans. I do.

Ques. 261. They are so placed on your sheetings to be seen by the buyer, are they not?

Ans. Yes.

Ques. 262. At the time "L L" was selected for these sheetings was it not done for the purpose of attracting the attention of the buyer?

Ans. Not for that purpose expressly.

Ques. 263. But that was one of the purposes, was it not?

Ans. I suppose the same reason applied to any other letters or words on the sheeting would be considered the same.

Ques. 264. You have evaded rather than answered my question. Will you please answer it?

Ans. In my answer I mean to convey the idea that the
587 letters "L L" were not placed on our sheetings to attract any more attention than any other part of the brand would.

Ques. 265. But you did expect that it would attract attention, more or less?

Ans. We expected that whoever bought the goods would see it.

Ques. 266. You expected it to be seen by the would-be customer before he made a purchase, did you not?

Ans. Certainly.

Ques. 267. Do you know anything about for what purposes four-yard brown cottons are used?

Ans. They enter largely into both domestic and manufacturing uses.

Ques. 268. To what class of consumers is it usually sold for domestic purposes?

Ans. To all classes.

Ques. 269. Do you know anything about the general run of purchasers of such goods who use the same for domestic purposes?

Ans. I do not.

Ques. 270. Have you any personal familiarity with the retail trade in such goods?

Ans. To no great extent.

Ques. 271. You cannot state, then, whether or not the "L L" on your four-yard sheeting would tend to induce such customers to believe they were the goods made by the Lawrence M'f'g Co.?

Ans. I never heard of such a case happening.

Ques. 272. Again you have evaded rather than answered my question; please answer the same.

Ans. I don't know anything about it.

Ques. 273. What is the output of the present defendant Co. in four-yard goods?

Objected to as no part of the direct examination, and as being immaterial and irrelevant.

Ans. I can't state without referring to the books.

Ques. 274. Cannot give us your best impression of such output?

588 Same objection.

Ans. We probably have averaged about four bales a day.

Ques. 275. How many yards to a bale?

Same objection.

Ans. 1,200.

Ques. 276. Where are your goods sold—I mean to what jobbers?

Same objection.

Ans. We have sold to Chicago jobbers and the jobbers of Milwaukee, St. Paul, Kansas City, St. Louis; I guess that will do.

Ques. 277. Do you stamp any of your four-yard sheetings with "L L" on them and also with any private brand for any of your customers?

Same objection.

Ans. We do.

Ques. 278. For whom do you stamp such goods and how is it done?

Mr. Hopkins states to the witness that if the defendant Co. has any dealer who uses a private mark or brand and the understanding with that dealer is that that brand should be kept private, that he can decline to answer the question if he chooses.

Ans. I decline to answer the question.

Ques. 279. The question is two-fold—which part of it do you decline to answer?

Ans. Both parts.

Ques. 280. That is, as I understand you, you decline to give me the name of your customer for whom you stamp your four-yard goods with "L L" and a private stamp?

Ans. I do.

Ques. 281. And also you decline, under the instructions of your counsel, to tell how you so stamp such goods?

Ans. I do as applied to private stamps.

589 Ques. 282. Notice is here give to counsel for the defendant that if he insists upon instructions to witness and witness declines to answer, in accordance to such instructions, the last question so put to him, that a motion will be made at the proper time to strike said deposition off from the files of the court, if counsel for complainant see fit so to do, and counsel for complainant declines here to proceed any farther with the cross-examination of this witness until such questions are answered.

Counsel for defendant offers to suspend the taking of depositions and take up the question, either before Judges Blodgett or Gresham, on Friday morning of this week, or as soon thereafter as counsel can be heard, to determine whether counsel for complainant is entitled to the witness' answers to the questions objected to.

Mr. RAINEY: I have no reply; counsel for defendant can take such course as they see fit.

Redirect examination:

Ques. 283. In your cross-examination you stated something as to your understanding that the Atlantic "L L" is a four-yard goods, and then stated that such goods are really lighter goods in the trade. I wish you would explain what you mean when you say the Atlantic "L L" is a four-yard goods.

Ans. I mean that, although the Atlantic "L L" is lighter than four yards, it is sold in competition with four-yard goods.

Ques. 284. How much lighter is it than the usual four-yard goods?

Ans. I do not know the exact weight.

ERNEST S. HOBBS.

STATE OF ILLINOIS, } ss:
County of Kane, }

I, Frank H. Thatcher, notary public in and for the county of Kane, in the State of Illinois, hereby certify that the foregoing deposition of Ernest S. Hobbs was taken before me by consent of the parties; that at the taking of the deposition of said Hobbs complainant was represented by Mr. W. G. Rainey and the de-
590 fendant by Hopkins, Aldrich and Thatcher; that before the taking of said deposition the witness was duly sworn by me, and that the said deposition was written out and signed by the witness in my presence.

I further certify that the fees for taking said deposition are $9.60, which were paid by the defendant.

Witness my hand and notarial seal this 28th day of Oct., A. D. 1886.

[SEAL.] FRANK H. THATCHER,
Notary Public.

Circuit Court of the United States, Northern District of Illinois.
In Chancery.

LAWRENCE MANUFACTURING COMPANY
vs.
AURORA COTTON MILLS.

In pursuance to agreement of the parties the depositions of Alonzo George, Reuben M. Hobbs, and Geo. R. Wilcox are taken on behalf of the defendant before Clara Richards, a notary public in and for the county of Kane, in the State of Illinois.

Complainant appears by its counsel, Mr. W. G. Rainey, and defendant by its counsel, Hopkins, Aldrich & Thatcher.

ALONZO GEORGE, being duly sworn, testified as follows:

Direct examination by Mr. HOPKINS:

Question 285. State your name, age, occupation, and place of residence.

Ans. Alonzo George; banker and treasurer of the Aurora Cotton Mills.

Ques. 286. What other position besides that of treasurer do you hold with the defendant Co.?

Ans. Director.

591 Ques. 287. Have you held these several positions since the organization of the defendant Co.?

Ans. I have been director of the Co. ever since its organization; treasurer for more than a year.

Ques. 288. Have you had any experience in buying and selling cotton goods, including what is known in the trade as brown sheeting; and, if so, over what period does that experience extend?

Ans. About twenty years I was in the dry-goods business.

Ques. 289. Do you know how many grades of sheeting are manufactured by the defendant Co.?

Ans. Four grades.

Ques. 290. Please give them.

Ans. They manufacture the Aurora R, Aurora B, Aurora C, and Aurora "L L."

Ques. 291. What is the character and quality of the Aurora "L L" sheeting?

Ans. The Aurora "L L" are medium grade of brown sheeting, weighing about four yards to the pound.

Ques. 292. Do you know of any other "L L" sheeting manufactured by other cotton mills and found in the trade?

Ans. I know the Badger State "L L," Beaver Dam "L L," Crescent City "L L," Lawrence "L L," Atlantic "L L," Shawmut "L L." Pacolet I have seen on the market; have not noticed it.

Ques. 293. There are other manufacturers of the same grade of sheeting marked "L L" in the trade, are they not?

This and previous question objected to as incompetent and irrelevant as to all "L L" except Lawrence.

Ans. There are.

Ques. 294. What company manufactures the Shawmut "L L?"

Ans. The Lawrence M'f'g Co.

Ques. 295. How long has the Atlantic "L L" been in the trade?

Same objection.

592 Ans. About twenty years I should judge.

Ques. 296. Do you know the brand or trade-mark of the Lawrence Co.?

Ans. I do.

Ques. 297. Is there any similarity of such a character between its brand or trade-mark for four-yard goods and the brand or trade-

mark of the defendant for the same grade of goods as would mislead a person of ordinary intelligence in the trade?

Same objection; also so because leading.

Ans. It would not mislead any one.

Ques. 298. What do the letters "L L" on these sheetings indicate?

Same objection.

Ans. Generally they indicate that the sheeting weighs about four yards to the pound.

Ques. 299. Standing alone do they or do they not indicate the origin or ownership of the goods?

Ans. They do not.

Ques. 300. Was there any intention on the part of the managers of the defendant Co. to adopt the trade-mark of the Lawrence Co. or to trench upon its exclusive rights in placing the letters "L L" upon one grade of sheeting manufactured by the Aurora Co.?

Same objection.

Ans. Never was any such intention, to my knowledge.

Ques. 301. Why did the Co. use the letters "L L" on a certain grade of its sheetings?

Same objection.

Ans. To distinguish the sheetings from other grades of the Co.'s manufacture.

Ques. 302. And that grade, as I understand you, is about the four yards to the pound grade of sheeting?

Same objection.

Ans. It is.

Cross-examination by Mr. RAINEY:

Ques. 303. You have been present during the taking of
593 the deposition of Ernest and Reuben Hobbs, L. K. Scott, and Geo. R. Wilcox, have you not?

Ans. Only a portion of the time, each one. I don't know whether the greater portion—only a portion of the time.

Ques. 304. You swore to the answer of the defendent in this case, did you not?

Ans. I presume I did.

Ques. 305. You were one of the original organizers of the defendant Co., were you not?

Ans. I was.

Ques. 306. How long previous to its organization had you been familiar with "L L" sheetings made by the Lawrence M'f'g Co.?

Ans. I was not familiar with the Lawrence "L L" previous to that time.

Ques. 307. How long have you known the Badger State, Beaver Dam, and Crescent City "L L?"

Ans. Only since I have been in the management of this Co.

Ques. 308. Who suggested the use of "L L" on your four-yard sheetings?

Ans. I don't remember of its ever having been spoken of in my presence what the brand should be; of course, I heard talk in relation to different grades of goods they would make, but not any particular brand.

Ques. 309. Who sells the "L L" product of your mill to the jobbing trade?

Ans. The most of the goods are sold by Curtis & Warren; I occasionally sell a bill of goods myself and look after trade. Curtis & Warren are of Chicago.

Ques. 310. Have you had any experience with the retail trade and consumers who buy "L L" sheetings?

Ans. Not much with retail dealers—not much experience with retail dealers or consumers who buy at retail.

Redirect examination by Mr. HOPKINS:

Ques. 311. In speaking in your direct examination of the
594 meaning of the letters "L L" you stated in substance that they meant grade or quality; with whom do they have such a significance?

Objected to as not proper redirect examination.

Ans. My experience has been wholly with the wholesale dealers, such as Farwell & Co., Marshall Field & Co., James Walker & Co., Aubach, Finch & Co., of St. Paul.

Ques. 312. Is there anything further in the use of letters on the different grades of sheeting in the trade that you can explain so as to be of any benefit or interest to the defendant?

Same objection, because incompetent and immaterial.

Ans. The use of the letters we use, the Aurora Cotton Mills use, is to distinguish the different grades of goods that we manufacture that a wholesale dealer will understand by the brand what we are making and selling.

Recross-examination by Mr. RAINEY:

Ques. 313. What are the respective weights of the sheetings made by the defendant Co.?

Ans. Our R goods weigh about 3.75 to the pound; C, 5½ yards; B, 3.95; "L L" takes a little over four yards.

Ques. 314. These several different grades are sold at different prices?

Ans. Yes.

Ques. 315. And are really different classes of goods, are they not?

Ans. They are all a different class of goods and different grades and different price.

Ques. 316. Is it not true that your Co. brands some of its four-yard goods with "L L" and also with private stamps for some of your customers?

Objected to as not proper cross-examination.

Ans. They may do it; I don't brand the goods; I presume they do.

ALONZO GEORGE.

595 REUBEN M. HOBBS, being duly sworn, testified as follows:

Direct examination by Mr. HOPKINS:

Ques. 317. What is your name, age, occupation, and place of residence?

Ans. Reuben M. Hobbs; my occupation is manufacturer; Aurora, Ill.; age, 65.

Ques. 318. How long have you lived in Aurora?

Ans. One year last May—one year and six months.

Ques. 319. In what kind of manufacturing have you been engaged and for how long?

Ans. I commenced in 1844; with the exception of nine years, ever since then manufacturer of cotton goods.

Ques. 320. What cotton mills have you been engaged in and in what capacity during the last 25 or 30 years?

Ans. Since 1865 I have been engaged as superintendent, having charge of the manufacture of all the goods made by the Lewiston Mills during the period of nearly two years, and the Pepperell M'f'g Co., located at Biddeford, Me., for sixteen years or nearly so, more or less—I think just sixteen; and the Montreal M'f'g Co., a cotton Co. located at Valleyfield, located in the Province of Quebec, and the Evansville Cotton Mill, for about two years, closing my superintendency a year ago last January with that mill.

Ques. 321. While you were at the Pepperell Mills as superintendent did you have any experience in the manufacture of what is known as brown sheeting?

Ans. I did.

Ques. 322. What knowledge, if any, have you of the different kinds and grades of sheetings manufactured by other cotton mills in the U. S. during the period you have mentioned?

Ans. I have visited many other corporations and have noticed the kind of goods they were making, both in the warp and filling, and the style of finish, the manner of putting up, with a view to compare them with those we were making ourselves. I often
596 visited also many of the leading wholesale houses, and examined closely and for the same purpose goods made by the different mills, I may say, all over the country. This visitation would occur sometimes two, three, and sometimes four times during the year.

Ques. 323. Are you a stockholder of the defendant Co.?

Ans. Yes, sir.

Ques. 324. Are you acquainted with the grade or quality of sheeting known among manufacturers and in the trade as four-yard sheetings?

Ans. I am.

Quse. 325. How extensively is that grade or quality of sheeting manufactured by the different cotton mills in the U. S. and in Canada?

Ans. It is impossible for me to state the full extent; I have seen and examined many of such goods known as four-yard goods, and I might say almost universally they are known as four-yard goods—that is, goods of four yards to the pound.

Ques. 326. What among manufacturers and in the trade do the letters "L L" stamped on brown sheeting indicate?

Ans. They indicate to my mind and from information gained by these visits to the different places of which I have named, they indicate the number of yards per pound and quality.

Ques. 327. Standing alone do the letters "L L" indicate among manufacturers and in the trade anything more than grade and quality?

Objected to as leading.

Ans. They do not.

Ques. 328. Have you ever seen in trade a brown sheeting stamped Atlantic "L L;" and, if so, when and where? State fully.

Objected to as incompetent and irrelevant.

Ans. I have seen it, as early as 1862, at the Atlantic Mills, Lawrence.

Ques. 329. Upon what grade or quality of sheeting was this Atlantic "L L" stamped at the time you mentioned?

597 Same objection.

Ans. It—well, there were about 4¼ or 4.30 yards to the pound.

Ques. 330. You have seen sheeting manufactured by that company and marked Atlantic "L L" in the trade since, have you?

Same objection.

Ans. I have.

Ques. 331. How many mills, if any, can you now call to mind that stamp the letters "L L" on their four-yard to the pound goods or sheetings?

Ans. There is the Lawrence, Pacolet, Badger State, and Janesville, Wis., Beaver Dam, Evansville M'f'g Co.; there are so many I can't remember; they escape my mind.

Ques. 332. How do those letters "L L" appear on these different manufactures; in what connection, I mean?

Same objection to this as to question above.

Ans. They appear in the brand of those different mills in the goods made by the different mills; there will be some heading, either bull's head or monogram; then comes the name of the mill, as, for instance, Evansville "L L."

Ques. 333. Do you know the trade-mark used by the defendant Co. on the grade of goods known as four-yard to the pound? If so, go on and state what it is fully.

Ans. I will say I know it when I see it, but couldn't tell from memory or give a description of any goods that I was most familiar with, for the reason I have accustomed myself when I want to know the brand to look it up.

Ques. 334. Have you examined the trade-mark of the Lawrence Co. on the same grade of sheeting and do you know what it is?

Ans. I have—and give the same reason—and I do.

Ques. 335. Would any person of ordinary intelligence, among manufacturers or in the trade, mistake the one brand or trade-mark for the other?

Objected to as leading.

Ans. Would not mistake the one for the other.

598 Ques. 336. Does the complainant manufacture and put upon the market any other four-yard sheetings aside from what is known as the Lawrence "L L?"

Ans. They do.

Ques. 337. What other?

Ans. Brand that is known as the Shawmut "L L."

Ques. 338. How long has the Shawmut "L L" been known in the trade as the product of the complainant?

Ans. I believe they were made nearly as long or quite as the Lawrence "L L."

Ques. 339. Among manufacturers and in the trade how is the Lawrence "L L" goods distinguished from the "L L" goods or sheetings of a like grade among other manufactures?

Ans. Well, it is distinguished by the brand, the whole brand—where made.

Ques. 340. What is that brand of the complainant?

Ans. That brand is the Lawrence Mills sheetings, with bull rampant or bull's head placed at the top.

Ques. 341. How are the defendant's goods of the same grade and quality distinguished from the "L L" goods of other manufacturers?

Ans. It has Aurora, rising sun, fine sheeting, monogram at the top A. C. M.

Ques. 342. Do the letters "L L" on the sheetings designate or indicate the origin or ownership of the goods to which they are attached?

Same objection.

Ans. They never do.

Ques. 343. What do they indicate?

Ans. They indicate a grade of goods 36 inches wide, weighing four yards to the pound.

Ques. 344. Was there any intention, at the time the Aurora Co. was organized and commenced the manufacture of the Aurora "L L" sheetings, on the part of the managers of the Co. to adopt

599 the trade-mark of the Lawrence Co. or to place the goods of the Aurora Cotton Mills on the market for Lawrence goods?

Same objection because incompetent and irrelevant.

Ans. It was not the intention.

Cross-examination by Mr. RAINEY:

Ques. 345. You are the same Reuben M. Hobbs that made an affidavit in this case which was used on the motion for preliminary injunction?

Ans. I am.

Ques. 346. Were the facts to which you have testified in those depositions known to you at the time you made such affidavit?

Ans. As I understood the questions the facts were as represented as I then represented. Yes, sir; they were.

Ques. 347. You are the father of the witness Ernest Hobbs, whose deposition has been taken on Saturday and to-day in this case?

Ans. I am.

Ques. 348. Were you present on both days while his deposition was being taken?

Ans. The first day I was present about one hour, and to-day, I think, nearly the whole of it.

Ques. 349. Have you and he talked about the subject-matter of his deposition?

Ans. I have not, sir. I have carefully avoided it.

Ques. 350. During which 16 years were you with the Pepperell Montreal M'f'g Co.?

Ans. I closed with them July 1st, 1881, I think.

Ques. 351. Is it not a fact that during the whole time you were with this company it manufactured a four-yard goods and branded it Pepperell R or R?

Ans. No, sir; we did not.

Ques. 352. Is there another four-yard brown cotton sheeting in the trade called the Pepperell R?

Ans. No, sir.

Ques. 353. Do you not know of a brown sheeting known as Pepperell R; if so, what make is it?

600 Ans. There is; it is made by the Pepperell M'f'g Co., the Co. that you are speaking of.

Ques. 354. When did this Co. make such goods; isn't it a four-yard goods?

Ans. No, sir; they made the Pepperell R's from commencement, but they are not a four-yard goods.

Ques. 355. Do you know of any four-yard goods; if so, how long have you know them and how designated, except those that are branded "L L?"

Ans. The Atlantic Mills did make, whether they do make now or not I don't know, a four-yard goods; I think they branded them P, and the Lonsdale is the only two I can remember.

Ques. 356. Is it not a fact that the Atlantic Mills was branding its four-yard goods with P at the same time it was branding other goods with "L L?"

Ans. Well, those goods they were branding "L L" that are about

4¼; they made them the year following still lighter, or thereabouts I am only taking, I am speaking as near as I can remember, that is what I want to say, from what I was told at that time or about that time.

Ques. 357. All you know about the Atlantic "L L" is from what was told to you?

Ans. I know more; that I saw the goods, examined the goods, and saw that they were very light and were goods that were formerly marked "L L;" my impression was that they took the P for the goods that weigh about four yards; that is my impression.

Ques. 358. But those marked with "L L" were of a different weight and class, were they not?

Ans. They were too light.

Ques. 359. Last question repeated.

Ans. My impression is and was then they were lighter goods.

Ques. 360. You mean lighter than four yards to the pound?

Ans. Lighter than four; yes, sir.

601 Ques. 361. Do I understand you correctly from your direct examination that "L L" means in the trade universally four yards to the pound?

Ans. Yes, sir; generally.

Ques. 362. You stated in your answer to question 9 (325) that they were almost universally known as four-yard goods; that is correct, is it?

Ans. Yes, sir; with a very few exceptions.

Ques. 363. When you see "L L" stamped on four-yard goods what does it indicate to your mind?

Ans. It indicates—they indicate they would weigh four yards to the pound.

Ques. 364. It also indicates coarse brown sheeting, does it not?

Ans. I don't understand what you mean by coarse; we don't call them coarse brown.

Ques. 365. It indicates a brown sheeting, then?

Ans. Yes, sir.

Ques. 366. This is its meaning also in the trade, is it not?

Ans. I think it is.

Ques. 367. Then to you and to the trade "L L" means a brown cotton sheeting of four yards to the pound?

Ans. Yes, sir.

Ques. 368. When you see "L L" stamped on such sheeting or when "L L" is spoken of in your presence with reference to sheetings what manufacturer comes to your mind?

Ans. I look to the whole brand to see who made them.

Ques. 369. That is when you see the brand?

Ans. Yes.

Ques. 370. When "L L" is spoken of with reference to sheeting without designating any particular brand what manufacture do you think of?

Ans. I most decidedly ask whose make it is.

Ques. 371. Why do you ask that question?

Ans. Because there are so many makers of "L L" that I could give no opinion unless I knew who made them.

602 Ques. 372. Would you not naturally think of the various brands you are most familiar with?

Ans. Certainly not.

Ques. 373. Will you swear that if a party were to speak to you of "L L" sheeting that you would not think of the Aurora "L L?"

Ans. That would depend upon the question that was asked.

Ques. 374. Explain what you mean.

Ans. If a person should ask me a question who made "L L" I should enumerate the same as I have here to-day to you—those I could remember.

Ques. 375. Among them would be the Lawrence, would it not?

Ans. Most certainly I should enumerate that.

Ques. 376. This would be true also if you were to hear a jobber inquire or speak about "L L?"

Ans. I don't know of any reason why that wouldn't be mentioned with the others.

Ques. 377. Then, if I understand your answers, you wish to be understood as saying that to you and the trade with which you are familiar "L L" means, first, a brown cotton sheeting; second, of a grade of four yards to the pound, and, third, made by one of the mills you have mentioned, including the Lawrence M'f'g Co. Is that correct; if not, wherein is it incorrect?

Objected to as being misleading and as assuming what the witness has not testified to.

Ans. If I understand your question enough—I don't fully understand it.

Ques. 378. You have already stated, as I understand you, that "L L" to you and the trade means a brown cotton sheeting; is that correct?

Ans. It is.

Ques. 379. Also that it was of a grade of four yards to the pound; is that correct?

Ans. Yes, sir.

603 Ques. 380. And also that it is made by one of the several mills you have mentioned in your deposition?

Ans. It is.

Ques. 381. How long have you been familiar with cotton goods stamped with "L L" made by the Lawrence M'f'g Co.?

Objected to as not being proper cross, and as irrelevant.

Ans. It has been quite a number of years; I couldn't tell the years exactly; somewhere from '68 to '75.

Ques. 382. Could you have given a description of the word and design stamped on the Lawrence goods, as you did in answer to question 24, without having it before you?

Ans. Lawrence "L L" and Shawmut "L L" were household words to us all in the Pepperell Mills—to most of us at the Pep-

perell Mills—those that had charge of the manufacturing of the goods. I think I could have given the Lawrence "L L."

Ques. 384. That would have been all you could remember?

Ans. I should have remembered their stamp or brand.

Ques. 385. Can you remember so as to describe the same, without having it before you, the brand of any other "L L" goods that you are familiar with?

Ans. Yes, sir.

Ques. 386. Describe the stamp of any other "L L."

Ans. Well, there is the Evansville "L L," I can't give you the whole description of it; Badger State "L L," Pacolet "L L," the Lancaster "L L," Beaver Dam "L L;" no more occurs to me just now. I can't remember to describe them.

Ques. 388. You have stated in answer to question 26 (342) that "L L" never does designate or indicate the origin or ownership of the goods to which they are attached. Do you state that as an absolute fact, or simply as your belief of the matter?

Ans. I state that from information gained from questions from wholesale and retail merchants and among manufacturers.

604 Ques. 389. You only have reference now to those with whom you have talked?

Ans. From the knowledge I have obtained in the variety of ways before mentioned.

Adjourned by agreement to 10.30.

Examination resumed at 10.30, pursuant to previous agreement.

Ques. 390. Are you a director of the defendant Co.?

Ans. I am now, since June last.

Ques. 391. Were you here at the organization of the company?

Ans. No, sir.

Ques. 392. Did you have anything to do with the selection of "L L" on this four-yard sheeting?

Ans. I did.

Ques. 393. Was it suggested by you; if not, by whom was it suggested?

Ans. I don't recollect who first suggested it; it might have been myself.

Ques. 394. Before your coming West, were you familiar with the trade reputation of "L L" sheeting in the western part of the U. S.?

Ans. Only to the extent of the goods made by the Atlantic Cotton Mills, the Lawrence; it don't occur to my mind now; only those two—I will correct myself; the Badger State, Janesville, Wis.

Ques. 395. What did you know about the Badger State "L L;" have you seen any of them in the market?

Ans. I had seen some of the goods.

Ques. 396. When did you first see the Badger State "L L?"

Ans. Shortly after they started—some ten or more years ago.

Ques. 397. Are you sure it was as long ago as ten years?

Ans. I am not sure, but I have that impression.

Ques. 398. Before you saw the Badger State "L L," should
605 one have stated to you about "L L" sheetings of the grade of four yards to the pound what manufacturer would you have thought of?

Ans. I shouldn't thought particularly of any one without asking by whom they were made.

Ques. 399. Wouldn't you have thought of the Lawrence?

Ans. I should not been more likely to think of the Lawrence than any other; I should have asked the question, Who made the goods—whose "L L" do you mean?

Ques. 400. I repeat my question: Would not you have thought of the Lawrence?

Ans. I could not tell because that is not my style of putting the question; what I mean is, I couldn't tell which one.

Ques. 401. My question was, before you heard of the Badger State "L L" and any one had spoken to you about four-yard sheetings stamped with "L L" would you not have thought of the Lawrence goods?

Ans. I should ask the question whether it was the Atlantic or the Lawrence "L L" that they made.

Ques. 402. The Lawrence goods, then, would come into your mind on such a question being asked?

Ans. I don't know of any reason why they shouldn't, because I was accustomed to visit there.

Ques. 403. And you were at that time very familiar with the Lawrence goods?

Ans. I knew them well.

Ques. 404. Were the Atlantic "L L" known in the trade at that time as four-yard goods?

Ans. They were known before that and by some were called four-yard goods.

Mr. Rainey says that in answer to the previous question the witness used the following language, and the same was requested to be put down by the notary taking the deposition: "They were known before by some and were called five-yard goods; I should have said four-yard goods," but on the protest of Mr. Hopkins the notary put
it down as above; to which the complainant's counsel objected.
606 Mr. Hopkins states that the witness did not make the statement as imputed to him by Mr. Rainey, and that Mr. Hopkins did not influence the notary to take the evidence different than was given by the notary; that the notary stated in the presence of counsel for both parties that the answer of the witness taken was as given by him, the witness.

Ques. 405. In giving your answer to the last question did you not use the words "five-yard goods," and then corrected yourself and used the words "four-yard goods?"

Ans. In answering that question I intended to say four-yard, but accidentally said five and corrected myself the moment I said it.

Ques. 406. Were the Atlantic goods in the trade known to you before you knew of the Badger State "L L" as four-yard goods?

Ans. Yes, sir.

Ques. 407. Were they so known to you and the trade up to the time you first saw the Badger State "L L?"

Ans. They were so known to me in 1862; to what extent they were known in the trade I don't know, but I presume as they were branded.

Ques. 408. Do you not know now that the Atlantic "L L" are five-yard goods?

Ans. I have no knowledge that they are five-yard otherwise than I have seen them and know them to be lighter than four yards.

Ques. 409. You have had the same knowledge ever since you have known the Atlantic "L L," have you not?

Ans. No, sir; I did not know them all through the trade during the whole time from the time I first knew them only as I saw them in the wholesale houses and in the retail stores.

Ques. 410. The first knowledge you had of the Atlantic "L L" was that they were lighter than four-yard goods; is that not correct?

Ans. They were known as four-yard goods on the light
607 side for about 4.25 or .30, as many other goods, but 4.25 goods are considered among manufacturers and, I believe, called by the trade a four-yard goods.

Ques. 411. Did you ever weigh them or weigh them the first time you saw them and ascertain by weighing the same their weight?

Ans. I did not weigh them; we are accustomed, manufacturers, to take their word, those who manufacture them, and by the accounts of the warp and filling a manufacturer is able to tell very nearly, on the light side or heavy, of the standard plain or the goods named.

Ques. 412. You have stated in your direct examination as a fact that the letters "L L" on sheeting never do designate or indicate the origin or ownership of the goods to which they are attached, as I understand your answer to question 26 (342); do you wish to be so understood as stating it as a fact?

Ans. I so understand it without anything if the "L L" are alone; nothing else to indicate it.

Ques. 413. Then you wish to be understood as saying that is your understanding and belief, and not that it is a fact that cannot be disputed; am I correct?

Ans. That is a mixed-up question, very ambiguous to my mind.

Ques. 414. Do you wish to be understood as saying that you believe "L L" on sheetings never do designate or indicate the origin or ownership of the goods to which they are attached, or that it is a fact that they never do designate or indicate ownership or origin?

Ans. I understand that the letters "L L" indicate grade and quality of a brown sheeting made four yards or thereabout to a pound.

Ques. 415. You have evaded rather than answered my question; will you be kind enough to answer it definitely, if you can?

Ans. I don't know how I can answer it any different.

608 Ques. 416. Do you understand 98 (413) which is repeated to you?

Ans. Well, I can't tell whether I understand it or not. I think I do. I have stated that "L L"—simply "L L"—do not indicate ownership.

Ques 417. Do you mean to you or to the trade?

Ans. I mean to me, and from all the information I have obtained from the trade.

Ques. 418. Is this your belief, or do you state it as a fact that cannot be disputed that the trade throughout the country understand "L L" never do indicate or designate the origin or ownership of the goods to which they are attached?

Ans. I can say that it is a fact that none of the letters of the alphabet has any company the sole right or ownership of; for instance, the Pepperell M'f'g Co. make goods known as R, and there are quite a number, a large number, of manufacturers that stamp their goods with the letter R, weighing very near the same per yard, grade, and quality.

Ques. 419. And you wish now to have your direct examination upon this point interpreted and construed in the light of the statements made in the last answer; do I interpret you correctly?

Ans. I do.

Ques. 420. You mean yes, do you?

Ans. I mean yes.

Ques. 421. You have spoken of the Shawmut "L L." When you hear that spoken of or see it what mill or manufacture do you think of?

Ans. I think of the Lawrence Mills then.

Ques. 422. You understand them to be four-yard goods made by the Lawrence M'f'g Co. and what are called seconds?

Ans. I do.

Ques. 423. What indicates to you that they are the seconds?

Ans. Imperfections in weaving; what is known as threads
609 run—that is, in skips, you may say; in other words, when a thread breaks and runs for some distance, thereby making imperfect cloth.

Ques. 424. You do not seem to have comprehended my question. When you see the Shawmut "L L" does not Shawmut indicate to you that they are stamped?

Ans. It indicates to me when I see Shawmut that they want to hide their brand.

Ques. 425. Again, you have evaded rather than answered my question. Please to answer the same. Does not the word Shawmut indicate to you when you see it stamped on sheeting that such sheetings are the seconds of the Lawrence "L L" goods?

Ans. It does.

Ques. 426. How many looms does the Aurora Cotton Mills run and has it run since its organization?

Objected to as not being a proper cross-examination and immaterial.

Ans. You mean the whole mill? About 376.

Ques. 427. How many of these are used in turning out your four-yard goods?

Ans. I don't know.

Ques. 428. You were at one time connected with the Evansville M'f'g Co., were you not?

Ans. I was; nearly two years—to January, 1885.

Ques. 429. You knew while there that that Co. was branding its four-yard goods with "L L," on some of which was its own stamp or brand, and on others of which were divers private brands of its customers, did you not?

Ans. I did.

Ques. 430. At the time this defendant Co. commenced to stamp "L L" on its four-yard goods was it not known to you and to others who organized the Co. that such goods would be put upon the market in competition with "L L" goods manufactured by these mills you have been speaking about, including the "L L" made by the Lawrence M'f'g Co.?

610 Objected to as not being proper cross-examination, immaterial, and irrelevant.

Ans. Yes; we expected there would be competition. We meant all that grade of goods—we expected—you meant all the goods manufactured by the different mills making four-yard goods—"L L" goods.

REUBEN M. HOBBS.

GEO. R. WILCOX, being duly sworn, testified as follows:

Direct examination by Mr. HOPKINS:

Ques. 431. What is your name, age, occupation, and place of residence?

Ans. Geo. R. Wilcox; Aurora, Ill.; dry-goods business.

Ques. 432. How long have you been engaged in the dry-goods business?

Ans. Eighteen years.

Ques. 433. During that period have you handled what is known in the trade as different grades of brown sheeting?

Ans. I have.

Ques. 434. Do you know of a grade of sheeting known in the trade as Aurora "L L?"

Ans. I do.

Ques. 435. Do you also know a grade of brown sheeting known in the market as Badger State "L L," Lawrence "L L," and Atlantic "L L?"

So much of the question as calls for information about other "L L" than the Lawrence "L L" objected to as incompetent and immaterial.

Ans. I do.

Ques. 436. What do the letters "L L" indicate on a certain grade of sheeting to the trade?

Objected to on the ground that the witness has not shown himself familiar with the trade.

Ans. Quality of the goods.

611 Ques. 437. If you wanted to get the "L L" goods of any manufacturer how would you give your order?

Objected to as incompetent and immaterial.

Ans. I should say of Aurora "L L," Lawrence "L L," Badger State "L L," Shawmut "L L."

Ques. 438. Who is the manufacturer of the Shawmut "L L?"

Ans. The Atlantic Mills.

Ques. 439. Who do you understand manufactures the Lawrence "L L?"

Ans. The Lawrence M'f'g Co.

Ques. 440. Do you understand that the Shawmut "L L" and the Lawrence "L L" are manufactured by the same Co.?

Ans. I understand they are not.

Ques. 441. Have you ever handled either of those goods?

Ans. I have.

Ques. 442. Which?

Ans. Both.

Ques. 443. To what extent?

Ans. Moderate extent.

Ques. 444. Have you also handled the Atlantic "L L?"

Same objection.

Ans. I have.

Ques. 445. During your eighteen years' experience in the dry-goods business have you had charge of the brown sheeting of the different grades, including the "L L" of these different manufacturers?

Ans. I have.

Ques. 446. You know the brand, then, of the Lawrence "L L" and Aurora "L L?"

Ans. I do.

Ques. 447. Would a person of ordinary intelligence mistake the one brand for the other, or are they so dissimilar in appearance as to be easily distinguishable?

Objected to as leading.

Ans. I don't think they would.

612 Ques. 448. You have stated your familiarity with the Aurora "L L," Lawrence "L L," Badger State "L L," and the "L L" of other manufacturers; now I will ask you if those letters standing alone indicate to the trade the origin or ownership of the goods—just the letters standing alone?

Same objection.

Ans. I should say they indicated four yards to the pound.

Ques. 449. If you wanted to know the ownership or origin of the goods, in addition to the quality or grade, what would you look to?

Same objection.

Ans. I would look to the trade-mark.

Ques. 450. In the case of the Lawrence M'f'g Co. to find that grade or quality of goods what would you find in addition to the letters "L L?"

Ans. The bull's head at the top and Lawrence Fine Sheeting.

Ques. 451. How would you do in the case of the Atlantic "L L?"

Objected to as incompetent and immaterial.

Ans. Go by the name.

Cross-examination by Mr. RAINEY:

Ques. 452. Please give us your age.

Ans. Forty-one years.

Ques. 543. How long have you known and handled "L L" sheeting of the Lawrence M'f'g Co. make?

Objected to as not being proper cross-examination, incompetent, and immaterial.

Ans. About fifteen to eighteen years.

Ques. 454. During this period of time should a dealer in cotton sheetings ask you if you wanted to buy "L L" sheetings would you not think of the Lawrence goods?

Same objection.

Ans. No quicker than any other "L L."

Ques. 455. The Lawrence goods would come to your mind, would they not?

613 Same objection.

Ans. With others.

Ques. 456. How long have you known in the trade four-yard goods branded with "L L" besides the Lawrence?

Ans. Fifteen years, the best I can remember.

Ques. 457. What four-yard goods branded "L L" have you known that long besides the Lawrence?

Ans. From that to this present time?

Ques. 458. Yes.

Ans. The Atlantic "L L," Lawrence "L L," Badger State "L L," Shawmut "L L," Aurora "L L;" that is all I call to mind now.

Ques. 459. Have you known the Badger State and the Aurora "L L" for fifteen years; if not, for how long?

Ans. The Badger State, as near as I can remember, about eight years, and the Aurora since it has been manufactured; something over two years.

Ques. 460. Do you understand or know the Atlantic "L L" as four-yard goods?

Ans. I do.

Ques. 461. To what extent have you handled the Atlantic "L L?"

Ans. Not to a large extent.

Ques. 462. That is rather an indefinite expression; can you not define it closer?

Ans. Probably a bale a year of the Atlantic at present.

Ques. 463. How long have you been handling a bale a year?

Ans. Some years we have handled more, and some not as much of the Atlantic.

Ques. 464. Question repeated.

Ans. That is just as near as I can get at it.

Ques. 465. Do you understand my last question?

Ans. Yes, sir.

Ques. 466. How do you understand it?

Ans. I understand it to mean how many bales we have used a year.

614 Ques. 467. My question is, how many years or how long have you been handling one bale of the Atlantic "L L" a year?

Ans. Probably for the last ten years.

Ques. 468. When you hear "L L" mentioned in the trade what significance or impression does it make upon your mind; what do you think of?

Ans. It indicates to me that it is four yards to the pound.

Ques. 469. Made by any manufacturer; if so, what?

Ans. By any manufacturer that manufactured "L L" goods.

Ques. 470. Then it means more to you than "four yards to the pound?"

Ans. It does not; it means four yards to the pound to me; that is what it means.

Ques. 471. Haven't you just this moment stated that it conveyed to your mind the different manufacturers that make "L L" sheetings?

Ans. My answer was that the "L L" indicated to my mind that the goods were four yards to the pound.

Ques. 472. My last question repeated, and I don't want it evaded.

Ans. I am not evading your question.

Ques. 473. Question repeated.

Ans. The way that I understand the question is that when you see "L L" on muslin it conveys to your mind what? My answer is, four yards to the pound.

Ques. 474. Question 38 (469) is as follows: "Made by any manufacturer; if so, what?" To which you have answered, "By any manufacturer that manufactures 'L L' goods." Following that question is, "Then it means more to you than four yards to the pound?" To which you answered, "It does not," etc. Now, I ask you again if you have not just stated in your deposition that when you hear "L L" mentioned it conveyed to your mind the
615 different manufacturers that make "L L" sheetings? Now, what answer have you to the last part of this question?

Objected to as improper and misleading.

Ans. I have no further answer to make.

Ques. 475. Do you refuse to answer it?

Ans. I do.

Ques. 476. Why?

Ans. For the reason I think I have answered the question in the best way I can.

Ques. 477. When you hear "L L" mentioned don't you think of the different "L L's" that you are acquainted with?

Ans. I do.

Ques. 478. Among them the Lawrence?

Ans. No more than others.

Ques. 479. I desire you to answer my question yes or no, and now repeat: When you hear "L L" mentioned do you think of the Lawrence?

Objected to as having been already answered.

Ans. Well, I might and might not.

Ques. 480. What is the fact—whether you do or not?

Objected to as being impertinent.

Ans. The fact is I might think of it and might not.

Ques. 481. Do you think of the Aurora?

Ans. I should think of that first.

Ques. 482. What would you think of next, what "L L?"

Ans. Badger State as quick as any.

Ques. 483. What next, if any?

Ans. Beaver Dam.

Ques. 484. What next, if any?

Ans. Might not think of any more, unless attention was called to some other brand.

Ques. 485. Do you never think of the Lawrence "L L" at all in your trade?

Ans. Unless shown to me by some salesman, it is not uppermost in my mind in connection with four-yard goods.

Ques. 486. What brand is uppermost in your mind in connection with four-yard goods?

616 Ans. Badger State and Beaver Dam; Aurora "L L"—I have handled the most of those lately.

Ques. 487. When you hear "L L" mentioned don't you think of the Aurora or Beaver Dam or Badger State, or one or all of them?

Objected to as not proper cross-examination and as immaterial.

Ans. I do.

Ques. 488. Then when you hear "L L" mentioned it conveys to your mind a four-yard goods, cotton sheetings made by the Aurora, Badger State, or Beaver Dam Mills, does it not?

Ans. It does.

Ques. 489. This has been so, of course, only since you have been handling these goods; is that correct?

Ans. No, sir.

Ques. 490. How long has it been so?

Ans. As long as I can remember—since I have been in the business—twelve or fifteen years.

Redirect examination by Mr. HOPKINS:

Ques. 491. In answer to the last question put to you on cross-examination you stated that it had been as long as you could remember—since you had been in business—twelve or fifteen years; what did you mean by that?

Objected to as improper and incompetent and immaterial.

Ans. I meant that "L L" stamped on goods conveyed to my mind that the goods weighed four yards to the pound.

Ques. 492. That is all that you intended to convey in your answer, is it not?

Same objection.

Ans. It is.

Recross-examination by Mr. RAINEY:

Ques. 493. At the time the last cross-question was put to you you understood what it referred to, did you not?

Ans. I suppose I did.

GEO. R. WILCOX.

617 STATE OF ILLINOIS, } ss:
County of Kane, }

I, Clara Richards, notary public in and for the county of Kane, in the State of Illinois, hereby certify that the foregoing depositions of Alonzo George, Reuben M. Hobbs, and Geo. R. Wilcox were taken before me by consent of the parties; that at taking of the depositions of said George, Hobbs, and Wilcox complainant was represented by Mr. W. G. Rainey and the defendant by Hopkins, Aldrich & Thatcher; that before the taking of said depositions the witnesses were duly sworn by me, and that the said depositions were written out by me and signed by the witnesses in my presence.

I further certify that the fees for taking said depositions are as follows: For the deposition of Alonzo George, $2; Reuben M. Hobbs, $7.40, and Geo. R. Wilcox, $3.60, making a total of $13; fees for swearing witnesses, 75 cents; total $13.75, and were paid by the defendant, The Aurora Cotton Mills.

Witness my hand and notarial seal this 29th day of Oct., A. D. 1886.

CLARA RICHARDS,
Notary Public in and for the County of Kane, State of Ill.

618 Circuit Court of the United States, Northern District of Illinois. In Chancery.

LAWRENCE MANUFACTURING COMPANY

vs.

AURORA COTTON MILLS.

In pursuance to agreement of parties the depositions of J. S. Hawley, A. Somarindyck, and Charles Anning are taken this 4th day of Nov., 1886, on behalf of defendant, before William George, a notary public in and for the county of Kane, State of Illinois; all formalities being waived.

Complainant appears by its counsel, Mr. W. G. Rainey, and defendant, by its counsel, Wm. George.

J. S. HAWLEY, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Ques. 494. What is your name, age, occupation, and place of residence?

Ans. J. S. Hawley; age, 66; business, merchant; Aurora.

Ques. 495. How long have you been engaged in the dry-goods business?

Ans. About forty-nine years.

Ques. 496. If you have been in the dry-goods business in any other place than Aurora state where.

Ans. Chicago.

Ques. 497. What year did you begin business in Chicago?

Ans. 1837.

Ques. 498. During that period have you handled what is known in the trade as brown sheetings?

Ans. I have.

Ques. 499. Are you familiar with the grade of sheetings known in the trade as Aurora "L L" sheetings?

Ans. I have not sold them, but have seen them.

Ques. 500. Do you know of a grade of sheeting known in the trade as Lawrence "L L?"

619 Ans. I do.

Ques. 501. Are you familiar with a grade of sheeting known as Atlantic "L L?"

Objected to as incompetent and immaterial.

Ans. I have sold those.

Ques. 502. Are you familiar with other brands of sheeting stamped "L L?"

Same objection.

Ans. I am with one other brand.

Ques. 503. Did you ever hear of the Shawmut?

Ans. I have.

Ques. 504. Have you ever heard of the Badger State and Beaver Dam "L L?"

Same objection.

Ans. I have.

Ques. 505. You have stated that you are familiar with a grade of sheeting known as Atlantic "L L." State, if you can recollect, when you first saw those goods on the market.

Same objection.

Ans. I couldn't give any time.

Ques. 506. Who do you understand manufactures the Lawrence "L L" goods?

Ans. I couldn't give the name of the manufacturer.

Ques. 507. What do the letters "L L" indicate to you or to the trade?

Ans. One of the grades of the manufacture.

Ques. 508. If you wanted to get the "L L" goods of any manufacturer state how you would give your order.

Same objection.

Ans. I should name the manufacture.

Ques. 509. In the trade how is this grade or quality of sheeting manufactured by the Lawrence Co. known?

Ans. By the name of "L L."

Ques. 510. How in the trade is this grade or quality of sheeting manufactured by the Aurora Cotton Mills Co. known?

Ans. The Aurora "L L."

620 Ques. 511. Question 16 (509) reads, In the trade how is this grade or quality of sheeting manufactured by the Lawrence Co. known? Now, please state what you intended your full answer to be.

Question objected to as improper, immaterial, and incompetent.

Ans. The Lawrence "L L" or "L L."

Ques. 512. You have stated that you have handled the Shawmut "L L." Who is the manufacturer of that brand, if you know?

Ans. Supposed to be the Lawrence M'f'g Co.

Ques. 513. If you desired to know who manufactured a piece of goods stamped with some brand to what would you look to determine the same?

Objected to as incompetent and immaterial.

Ans. I should look to the manufacturer's brand on the goods.

Ques. 514. Do the letters "L L," standing alone, indicate who made the goods?

Objected to as leading.

Ans. They do not.

Ques. 515. State, if you can, how long you have handled the Lawrence "L L" goods.

Ans. I couldn't state positively.
Ques. 516. You may state as near as you can.
Ans. May be twenty-five or more years.
Ques. 517. Have you been handling or familiar with the Atlantic "L L" goods about the same length of time?

Same objection.

Ans. My impressions are that I have.
Ques. 518. How would you give an order to a jobber for Lawrence "L L" goods? Explain fully.

Objected to as incompetent and immaterial.

Ans. I would order the Lawrence "L L."
Ques. 519. If you desire "L L" goods made by the Atlantic Mills how would you give your order?

Same objection.

621 Ans. Order for Atlantic "L L."
Ques. 520. If you desired goods made by the Aurora Cotton Mills Co. how would you give your order?

Same objection.

Ans. For Aurora "L L."

Cross-examination by Mr. RAINEY:

Ques. 521. During the past sixteen or eighteen years is it not true that when you hear "L L" sheeting mentioned you think of the goods manufactured by the Lawrence M'f'g Co.?
Ans. Not altogether.
Ques. 522. But you do think of these goods?
Ans. I said not altogether.

J. S. HAWLEY.

A. SOMARINDYCK, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Ques. 523. What is your name, age, former occupation, and place of business?
Ans. My name is A. Somarindyck; I understand that I am 64 years; merchant; Aurora.
Ques. 524. How long were you engaged as a merchant?
Ans. About fifty years.
Ques. 525. In what places have you been so engaged?
Ans. Poughkeepsie, New York city, and Aurora.
Ques. 526. While in the business have you handled what is known in the trade as brown sheetings?
Ans. I have.
Ques. 527. During what part of that time?
Ans. Most all of it.
Ques. 528. Do you know a grade of brown sheeting known as the Lawrence "L L?"
Ans. I believe I do.

Ques. 529. Do you recollect any other brown sheetings known in the trade as "L L" sheetings. If so, enumerate.

Objected to as incompetent and immaterial.

622 Ans. Well, I can't say that I positively swear that I know; I think I have seen the Aurora "L L." I have heard of the Badger State; I am not positive that I have seen them, and I think, when in the trade, there were others of that particular designation, but I can't remember now.

Ques. 530. Have you ever handled a grade of brown sheetings known as Atlantic "L L?"

Same objection.

Ans. I cannot swear positively, but think I have.

Ques. 531. What do you understand the letters "L L" when stamped upon this class of goods to indicate?

Ans. A certain weight of goods manufactured by the company.

Ques. 532. While you were in business if you wanted an "L L" goods of any manufacture how would you give your order?

Same objection.

Ans. If I was ordering, for instance, from the Aurora Cotton Mills, I should order the quantity that I wanted of Aurora "L L" sheeting, that would designate to me the quality of goods that I wanted.

Ques. 533. If you were ordering "L L" goods of a jobber in Chicago, or in any other city, how would you give your order?

Same objection.

Ans. If I wanted Lawrence "L L" from a jobber I should designate that particular brand; or if I wanted any other brand, for instance, of the Aurora manufacture, should designate the Aurora Mills brand "L L."

Ques. 534. State whether or not if you ordered of the trade "L L" goods the jobber will understand you as ordering any particular manufacture; state fully.

Same objection.

Ans. I should not send such an order.

Ques. 534½. Why not?

Same objection.

623 Ans. Other brands being in the market, the jobber could not fill the order as wanted.

Cross-examination waived.

A. SOMARINDYCK.

AURORA, *Nov. 4th.*

Met pursuant to adjournment.

Present: Mr. Wm. George, for defendant, and Mr. W. G. Rainey, for the complainant.

Mr. CHAS. ANNING, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Ques. 535. What is your name, age, occupation, and place of residence?

Ans. Chas. Anning; 51 years of age; dry-goods merchant; Aurora, Ill.

Ques. 536. How long have you been in the dry-goods business?

Ans. About thirty-five years.

Ques. 537. In what places have you been in the business?

Ans. Bridgeport; Dorchester, England; London, England; Toronto, Canada; Chicago, Ill.; St. Louis, Mo.; Aurora, Ill.

Ques. 538. During that period have you handled what is known in the trade as muslins or brown sheeting; and, if so, to what extent?

Ans. I have handled to the extent of many thousand pieces.

Ques. 539. Do you know of a grade of sheetings known in the trade as "L L?"

Ans. I do.

Ques. 540. Do you know a grade of sheeting in the market as Lawrence "L L?"

Ans. I do.

Ques. 541. Are you familiar with any other sheetings stamped "L L;" if so, what?

Objected to as incompetent and immaterial.

Ans. Yes; Atlantic "L L," Beaver Dam "L L," Badger State "L L;" there are several that I can't call to mind now.

624 Ques. 542. What do the letters "L L" mean in the trade, as you understand them?

Ans. Not any more than the letter A, B, or C would.

Ques. 543. If you wanted goods—"L L" goods—of any manufacture how would you order them?

Same objection.

Ans. I should order: Send me Aurora "L L" sheeting.

Ques. 544. If you wanted goods made by the Lawrence Co. of the "L L" brand how would you order them?

Same objection.

Ans. Send me Lawrence "L L" sheeting.

Ques. 545. What do the letters "L L" indicate on a certain grade of sheetings to the trade?

Same objection.

Ans. To a person buying goods from brands it would indicate that particular manufacture made as goods of the same quality as

each brand indicated; by that I mean, for instance, a mill making three or four brands, and a merchant well versed in the different brands of that particular mill would know the difference between B or C or whatever number. Some brand by letter and some by a number.

Ques. 546. Do the letters "L L" standing alone indicate to you or to the trade that they are made by any particular mill?

Objected to as leading.

Ans. No.

Ques. 547. Are you familiar with the brand of the Lawrence "L L" sheetings?

Ans. Yes.

Ques. 548. Are you familiar with the brand of the Aurora "L L" sheetings?

Ans. Yes.

Ques. 549. Would a person of ordinary intelligence mistake the one for the other, or are they so dissimilar as to be easily distinguished?

Same objection.

625 Ans. Persons of ordinary intelligence would not be mistaken.

Ques. 550. Are they easily distinguishable?

Same objection.

Ans. They are.

Ques. 551. If you wanted to know the ownership or origin or manufacture of goods in addition to the quality, what would you look to?

Objected to as incompetent and immaterial.

Ans. If I understand that correctly, after examining the sheeting I would ask, What manufacture is this?

Ques. 552. When looking at a brand as stamped upon sheeting what part or portion of the brand as stamped indicates the manufacture or origin?

Same objection.

Ans. The mills from which it was made from.

Ques. 553. You have stated your familiarity with certain "L L" goods. In the case of the Lawrence M'f'g Co. goods what do you find in addition to the letters "L L?"

Same objection.

Ans. Well, on the top of the sheeting it is a bull's head or a bull, I can't remember which, or a head of the cow species; the letters "L L" are different from the Aurora muslin; any other particular brand I am not conversant with, as I buy goods from quality and not by brands.

Cross-examination waived.

CHAS. ANNING.

STATE OF ILLINOIS, } ss:
County of Kane, }

I, William George, notary public in and for the county of Kane, in the State of Illinois, hereby certify that the foregoing depositions of J. S. Hawley, A. Somarindyck, and Charles Anning were taken before me by consent of the parties; that at the taking of the depositions of said Hawley, Somarindyck, and Anning complainant was represented by Mr. W. G. Rainey and the defendant by Hopkins, Aldrich & Thatcher; that before the taking
626–638 of said depositions the witnesses were duly sworn by me, and that the said depositions were written out and signed by the witnesses in my presence.

I further certify that the fees for taking said depositions are as follows: For the deposition of J. S. Hawley, $2; for the deposition of A. Somarindyck, 80 cents; for the deposition of Charles Anning, $1.20; making a total of $4, paid by defendant.

Witness my hand and notarial seal this 4th day of Nov., A. D. 1886.

WILLIAM GEORGE,
Notary Public.

639 Circuit Court of the United States, Northern District of Illinois. In Chancery.

LAWRENCE MANUFACTURING COMPANY
vs.
AURORA COTTON MILLS.

In pursuance of agreement and by consent of the parties to the above-entitled cause the deposition of Marshall J. Wilson is taken on the part of said defendant before P. H. T. Mason, a notary public in and for the county of Cook, in the State of Illinois, on this 7th day of January, 1887.

Defendant appears by its attorney, N. J. Aldrich, and the complainant by W. G. Rainey.

MARSHALL J. WILSON, being first duly sworn, deposes and says:

Ques. 628. What is your name, age, residence, and occupation?
Ans. Marshall J. Wilson; age, 45; residence, Chicago, Illinois; occupation, salesman.
Ques. 629. With what house, if any, are you associated?
Ans. Marshall Field & Co.
Ques. 630. What business is Marshall Field & Co. engaged in?
Ans. Jobbers of dry goods.
Ques. 631. How extensive is their business?
Ans. Among the largest in the United States.
Ques. 632. How long have you been in their employ?
Ans. Twenty-one years and a half.
Ques. 633. What position do you hold in the firm?
Ans. I am a salesman.

Ques. 634. In what department?

Ans. What is known as general salesman in our house.

Ques. 635. Have you handled what is known as brown
640 sheetings of different grades while in the employ of the firm?

Ans. I have.

Ques. 636. For how long a time?

Ans. For the past eight years.

Ques. 637. Are you acquainted with what is known in the trade as "Lawrence L L" sheeting?

Ans. I am.

Ques. 638. Are you acquainted with any other "L L" sheetings that is handled in the trade? If so, state what other "L L" sheetings you know in the trade.

Objected to as incompetent and immaterial.

Ans. Badger "L L," Beaver Dam "L L," Atlantic "L L," Aurora "L L," Shawmut "L L," and Pacolet "L L." There are other brands I know of that we do not carry.

Ques. 639. What manufacturer produces the Shawmut "L L" sheeting?

Ans. The Lawrence Mills.

Ques. 640. What do the letters "L L" on the sheetings mentioned by you indicate in the trade?

Ans. The letters "L L" on sheetings to me without anything else than "L L" would not indicate anything farther than a grade of goods.

Ques. 641. Do those letters standing alone indicate to the trade the origin or ownership of the goods?

Ans. They do not.

Ques. 642. How are orders in the trade given and filled on "L L" sheetings?

Objected to as incompetent and immaterial; and, further, because the witness has not shown himself to be familiar with the custom of the trade in this regard.

Ans. If I should receive a mail order my customers, as a rule, indicate on the order the kind of "L L" sheeting they want.

Ques. 643. How do they indicate what "L L" sheeting they want?

Ans. By giving the name.

641 Ques. 644. What have you had to do during the last few years with filling orders received by your firm for "L L" sheetings or cotton goods?

Ans. It has been my duty to fill them, and I have done so.

Ques. 645. How many years have you filled orders for that class of goods?

Ans. For the past eight years.

Ques. 646. Suppose an order for one, two, or more bales of "L L" sheetings should come to your house, what would you do?

Same objection by counsel for complainant.

Ans. If I should receive an order for "L L" sheetings I would at

once write the customer, asking him to indicate by letter the kind of "L L" sheeting he wished us to ship.

Ques. 647. How long have you known the Atlantic "L L" sheetings in the trade?

Same objection as before.

Ans. Since I have been selling domestics, for the past eight years.

Ques. 648. How long have you known the Badger "L L" in the trade?

Same objection.

Ans. I think about the same length of time.

Ques. 649. You stated, did you not, that the Lawrence "L L" and the Shawmut "L L" were manufactured by the same company?

A. I did, as far as I know.

Ques. 650. What is the difference, if any, between Lawrence "L L" and the Shawmut "L L" sheetings?

Ans. The first difference is in the name, if there be any difference, and that is all the difference I believe to be in the goods.

Ques. 651. Is there any difference in the price of the Lawrence "L L" and the Shawmut "L L" in the trade?

Ans. There is usually a quarter of a cent difference.

Ques. 652. Why is this difference in the price made, if you know?

642 Ans. It is made so as to introduce another brand of goods to head off any new brands that might be thrown on the markets with the same letters.

Ques. 653. Is the putting of the letters "L L" on Aurora sheetings calculated to, and do they in fact, deceive the trade in mistaking the goods for the Lawrence goods?

Ans. I should say they did not.

Ques. 654. Would a person of ordinary intelligence in the trade mistake the brand of the Aurora "L L" goods for the Lawrence "L L's?"

Ans. They would not if they could read.

Ques. 655. How long have you been familiar with the Lawrence "L L's?"

Question withdrawn.

Ques. 656. Have you been familiar with the Lawrence "L L's" for the last seven or eight years?

Ans. I have.

Ques. 657. Look at the tablet, paster, or tag marked "Exhibit I," and state if you ever saw any of them before.

Ans. (Witness examining tag.) Yes, sir; I saw it when it was first brought to our store on the Lawrence "L L" sheetings about the 1st of July, 1886.

Ques. 658. Did you ever see any of those tags or pasters prior to July, 1886?

Ans. No, sir; the goods might have come in a few days before the 1st day of July, 1886.

Counsel for complainant calls upon counsel for defendant to state whether he proposes to offer in evidence the tag referred to in "Exhibit I," as counsel for complainant desires to interpose and does interpose an objection to the same and to all questions and answers with reference to the same on the ground of incompetency and irrelevancy.

Counsel for defendant says he does not know whether he shall introduce the tag in evidence or not.

Cross-examination by Mr. W. G. RAINEY:

643 Ques. 659. What do you mean when you say the letters "L L" standing alone do not indicate the origin or ownership of the goods?

Ans. I mean just what I say.

Ques. 660. Please explain.

Ans. I cannot explain anything different from what I have already stated. As standing alone they do not indicate quality, width, or quantity.

Ques. 661. When you refer to the trade in your deposition you have reference to the jobbing trade, do you not?

Ans. I have reference to both jobbing and retail trade.

Ques. 662. Have you any familiarity with the retail trade?

Ans. I have.

Ques. 663. For the past eight years?

Ans. Yes, sir.

Ques. 664. In what way do you come in contact with the retail trade?

Ans. I come in contact with the retail merchant, and through him I come indirectly in contact with the retail trade.

Ques. 665. Whatever knowledge, then, which you have as to the meaning of "L L" to the consumer or purchaser from the retail merchant is obtained from the merchant himself, and not from the consumer; is that correct?

Ans. That is correct.

Ques. 666. Do you state it to be a fact, or simply your individual opinion, that "L L" has no meaning in the trade that indicates the quality or quantity or width of the goods on which they are stamped?

Ans. I should say if it is stamped on a piece of bleached muslin worth fifteen cents a yard and on a piece of bleached muslin worth four cents a yard, each of these qualities having a name above, it would indicate a difference; but when stamped on unbleached or brown sheetings known to the trade as four-yard goods it has no value.

644 Ques. 667. You evidently do not comprehend my question. I will explain. You have stated in your direct examination that "L L" has no meaning to the trade when standing alone that indicates quality, width, or quantity. Now, my question is:

"Do you state this to be a fact that is undisputed or that cannot be controverted, or simply an individual opinion of your own as to its meaning in the trade?"

Ans. Just read my original answer.

Question and answer read to witness.

The WITNESS: It is so understood by the trade, and I have always sold goods with that understanding, believing that I was justifiable in doing so.

Ques. 668. Do you swear it to be a fact that "the trade" understands the meaning of "L L" as you have stated it, or that it is your opinion and belief that the trade so understands it?

Ans. I think the trade so understands it.

Ques. 669. It is your opinion, then, simply?

Ans. No; it is not.

Ques. 670. Repeated to witness by request.

Question objected to as having been sufficiently answered.

Ques. 671. Mention the name of any merchant or dry-goods dealer who understands "L L" as you do to mean nothing, so far as it indicates quality, width, or quantity of the goods on which it is stamped.

Ans. Mark Sherwood; employed with Marshall Field & Co. I can go on till doomsday if you wish me to.

Ques. 672. Did either one of these persons ever say to you or in your hearing that to them "L L" did not mean quality, width, or quantity of the goods?

Objected to as improper.

Ans. Quite frequently my customers say to me that it is immaterial to them which of the different brands of "L L" sheetings I give them, as frequently we are out of some one brand or another, and I then mention the fact, and with very few exceptions they make the reply as above stated.

The last question repeated to the witness and a categorical answer requested.

Same objection as being improper.

645 Ans. It never came to a point when I was compelled to ask any such question.

Ques. 673. Then how are you enabled to swear that Mark Sherwood and all the other merchants and dealers which it would take you till doomsday to mention understand "L L" as you do, that it means nothing, when standing alone, which indicates the quality, quantity, or width of the goods?

Ans. When the question was asked me to name a merchant or dealer in dry goods that believed as I did with regard to "L L" as applied on four-yard sheetings I supposed that the attorney meant some one with whom I had had conversation on the subject.

Ques. 674. Again repeated.

Objected to by counsel for defendant as having been answered.

Ans. I don't see how I am able to give a different answer from what I have given.

Ques. 675. I will go back to my original question and ask you now whether you wish to be understood as stating that it is a fact which cannot be controverted that in the trade "L L" means nothing having reference to quality, quantity, or width of the goods, or do you intend to be understood as saying that it is your belief such is the understanding in the trade?

Ans. It is my belief that such is the understanding in the trade.

Ques. 676. When you hear "L L" mentioned by a merchant what comes into your mind?

Ans. "L L" would come into my mind.

Ques. 677. Nothing else?

Ans. If a customer should say to me I want some "L L" muslin I should ask him what kind of "L L" he wanted.

Ques. 678. In such a case as that what would enter into your mind besides the fact that he wanted "L L" muslin?

Ans. It would at once enter into my mind that he wanted
646 goods known to the trade as four-yard goods in unbleached muslin.

Ques. 679. You would understand him to refer to goods of 36 inches wide, would you not?

Ans. Yes, sir; as applied to unbleached muslin.

Ques. 680. Then is it not true that when you hear such an expression you think of brown muslins 36 inches wide, four yards to the pound?

Ans. It is.

Ques. 681. Then is it not also true that "L L" means a muslin of a grade that is four yards to the pound of a width that is 36 inches?

Ans. It does not, for the reason that there are other goods known as unbleached muslin that are not branded "L L" that are 36 inches wide and weigh four yards to the pound.

The last question repeated.

The WITNESS: Yes; with the explanation that I understood the question to be as applying to muslin of that grade.

Ques. 682. Then, if I now understand you, you state that "L L" does mean something, and that it means width, grade, and quality; is that correct?

Ans. When applied or on goods that are known as four-yard goods to the trade.

Ques. 683. Is it not also true that when you hear "L L" mentioned with reference to brown muslin of four yards to the pound that it indicates to your mind the manufacture or make of the Lawrence, Badger State, Beaver Dam, Aurora, Shawmut, or Pacolet?

Ans. It does.

Ques. 684. And if you should have before you an order for so many pieces of "L L" muslin, or a customer should ask you about "L L" muslins of four yards to the pound, you would at once suppose that he had reference to one of these several makes, would you not?

Ans. I would.

647 Ques. 685. How many bales of "L L" sheetings made by the Lawrence Manufacturing Company has the house of Marshall Field & Co. handled during the past eight years as compared to any other brand of "L L" four-yard goods?

Objected to by defendant as not proper cross-examination, as irrelevant, and immaterial.

Ans. I am not in position to give you an answer.

Ques. 686. Give us the best estimate you can make at this time.

Same objection by defendant.

Ans. I could not make an estimate; am a poor guesser, and in my position I do not have access to the stock books, and it would be simply folly for me to answer such a question.

Ques. 687. Has the house sold as many Lawrence "L L's" as Aurora "L L's?"

Ans. I do not know.

Ques. 688. Have you, as a salesman, sold as many Lawrence "L L's" as Aurora "L L's?"

Objected to by defendant for reasons last given.

Ans. I am unable to answer the question only as a guess. My judgment would be that the sales were perhaps about equal to my customers.

Ques. 689. How is it as to the Pacolet "L L's" and the Lawrence?

Same objection by defendant.

Ans. The Lawrence is quite in excess as compared with Pacolet, in my personal sales.

Ques. 690. Consider the question repeated as to the other "L L's?"

Same objection by defendant.

Ans. My customers being largely from the State of Wisconsin and southern Minnesota it would be my judgment that my sales on these goods—Badger and Beaver Dam—was largely in excess of the Lawrence or any other "L L" sheeting.

648 Ques. 691. Has that been the case as to the Beaver Dam for eight years?

Objected to by defendant for same reason.

Ans. The Beaver Dam have not been made for eight years past. Within the past two years the sales of Beaver Dam have been as stated above—that is, more than the Lawrence.

Ques. 692. How long has it been so that you have sold as many Badger State "L L's" as the Lawrence?

Same objection by defendant.

Ans. I should say about three to four years past.

Ques. 693. How long have you sold as many Aurora "L L's" as Lawrence?

Same objection by defendant.

Ans. I don't think I could state the facts in regard to that because my trade in Aurora "L L" has been largely with one or two men, and I could not state the time definitely; within two years, I should say, as near as I can get at it.

Ques. 694. Then, if I understand you, is it not true that up to about three or four years ago and during the first four years of your handling such goods you sold more Lawrence "L L's" than any other "L L" goods branded "L L?"

Same objection by defendant.

Ans. I did, for the reason that at that time the Lawrence "L L" goods were well known to the trade and the Badger "L L" had to be introduced, and we were at very many times out of the Badger "L L" sheetings, as the manufacturers could not supply the demand.

Ques. 695. And is it not also true that during those first four years should you have received an order for a four-yard muslin branded with "L L" by reason of the fact that the Lawrence goods were so well known you would have supposed such an order meant Lawrence goods?

Same objection by defendant.

Ans. If the order should come in for "L L" sheetings and no brand named, if the quantity was small, say five pieces, I
649 would fill the order according to what the customer had bought when last in market. If I could not get the information in that way I would then give him the five pieces from the stock we had the most of and write him that he had omitted to give the name of the "L L" sheeting wanted, and tell him what I had sent and trusting it would be satisfactory to him.

Ques. 696. During the first four years that you handled such goods, beginning eight years back, what brand of "L L" sheetings of four yards to the pound did Marshall Field & Co. have besides the Lawrence?

Ans. I would not state as a matter of memory with regard to that matter. My judgment would be, however, that we had but two brands, Badger "L L" and Lawrence "L L."

Ques. 697. You have already stated heretofore that during these four years mentioned the Lawrence goods were well known in the trade, but the Badger "L L" had to be introduced, and you were frequently out of them. Now, during this time and under these circumstances should you have received an order for five pieces of "L L" sheeting, would not you have primarily supposed the customer wanted Lawrence "L L?"

Ans. It would depend largely upon the locality from which the order came and of my knowledge of the customer.

Ques. 698. You would understand such an order to mean, at that time, either Lawrence or Badger State sheeting, would you not?

Ans. Yes, sir.

Redirect examination by Mr. N. J. ALDRICH:

Ques. 699. Are all the sheetings in the market stamped with the letters "L L" 36 inches wide and weigh four yards to the pound?

Ans. There is a sheeting known as Atlantic "L L" that does not weigh four yards to the pound.

Ques. 700. Is it not true that the other sheetings so stamped vary somewhat in weight?

Ans. Never having weighed them to ascertain the fact, I am unable to answer the question.

650 Ques. 701. What proportion of the orders received and filled by your house for "L L" sheetings specify the name and brand the customers want, and what simply call for "L L" sheetings, so far as you know?

Objected to by complainant as incompetent and irrelevant, and because the orders themselves are the best evidence.

Ans. Very few indeed of my customers order sheetings without giving a brand. I occasionally have orders naming "L L," but very seldom.

Ques. 702. How many orders for simply "L L" sheetings have you received or had within the last year or two? State as near as you can.

Same objection by complainant.

Ans. I could not give a definite answer to that question. I could not tell you. It would be impossible.

Ques. 703. Are those orders of frequent occurrence?

Same objection by complainant.

Ans. They are not.

MARSHALL J. WILSON.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, P. H. T. Mason, notary public in and for the county of Cook, in the State of Illinois, hereby certify that the foregoing depositions of Ilestius S. Smith and Marshall J. Wilson were taken by me by consent of the parties; that at the taking of the deposition of said Smith the complainant was represented by Mr. W. G. Rainey and the defendant by Mr. A. J. Hopkins, and at the taking of the deposition of said Wilson the complainant was represented by Mr. W. G. Rainey and the defendant by Mr. N. J. Aldrich; that before the taking of the said depositions the witnesses were duly sworn by me, and that the said depositions were written out by me and signed by the witnesses in my presence.

I further certify that the fees for taking said depositions are as follows: For the deposition of Ilestius S. Smith, $7.25, and for
651 the deposition of Marshall J. Wilson, $6.25, making a total of $13.50; were paid by the defendant, the Aurora Cotton Mills.

Witness my hand and notarial seal this 7th day of January, A. D. 1887.

P. H. T. MASON,
Notary Public in and for the County of Cook, in the State of Illinois.

Circuit Court of the United States, Northern District of Illinois.
In Chancery.

LAWRENCE MANUFACTURING COMPANY
vs.
AURORA COTTON MILLS.

Depositions taken on this the 27th day of January, 1887, at the office of Messrs. Raymond & Rainey, Chicago, Illinois, before P. H. T. Mason, a notary public in and for the county of Cook, State of Illinois, on behalf of the defendant, by consent of the parties, all formalities being waived.

Present: Mr. N. J. Aldrich, representing the defendant, and Mr. W. G. Rainey, representing the complainant.

GEORGE H. CURTISS, a witness produced on behalf of defendant, being first duly sworn, deposes and says:

Ques. 704. What is your name, age, residence, and occupation?
Ans. George H. Curtiss; age, 51; residence, Chicago, Illinois; occupation, commission dry goods.
Ques. 705. With what house, if any, and how are you connected?
Ans. I am connected with Curtiss & Warren; am a partner in the house.
Ques. 706. Do you handle brown sheetings in your business?
652 Ans. Yes.
Ques. 707. Are you acquainted in the trade with what is known as Lawrence "L L" sheeting?
Ans. Yes.
Ques. 708. Are you acquainted with any other "L L" sheeting that is handled in the trade? If so, go on and state what.
Ans. I know a great number—the Aurora "L L," Hoosier "L L," Badger State "L L," Beaver Dam "L L," Pacolet "L L," and many others that don't come to my mind just this moment.
Ques. 709. Do you know in the trade an "L L" sheeting that is called the Shawmut "L L?"
Ans. Yes, sir.
Ques. 710. What manufactory or company produces that sheeting?
Ans. The Lawrence.
Ques. 711. Do you know in the trade an "L L" sheeting called the Atlantic "L L?"

Objected to by complainant as incompetent and irrelevant.

Ans. Yes, sir.

Ques. 712. What do the letters "L L" indicate to the trade, and what do they mean when placed on brown sheetings?

Objected to by complainant, as the witness has not qualified himself to express an opinion on this subject.

Ans. As far as my experience goes the term is used to express a grade of goods known in the market as a four-yard sheeting.

Ques. 713. Do they or do they not, standing alone, indicate the origin or ownership of the goods manufactured?

Ans. They imply a four-yard sheeting made by the mill from which they are ordered.

Ques. 714. How long have you handled "L L" brown sheetings?

Ans. About fifteen years.

653 Ques. 715. Whose make of "L L" sheetings does your firm now handle?

Ans. The Aurora "L L's," manufactured by the Aurora Cotton Company, and the Hoosier State "L L," manufactured by the Evansville Cotton Manufacturing Company.

Ques. 716. Does your firm handle other brands of goods made by different mills than those mentioned by you?

Ans. We do.

Ques. 717. Do you handle other grades of brown sheeting than the "L L?"

Ans. We do.

Ques. 718. How are the orders for "L L" sheetings usually received by you—that is, do they or do they not designate the make or product of some particular mill?

Objected to as incompetent and irrelevant; and, further, because the orders themselves are the best evidence of their contents.

Ans. The orders always read designating the mill and grade of goods wanted.

Ques. 719. Is the putting of the letters "L L" on the Aurora four-yard sheeting calculated to and do they in fact deceive the trade in mistaking the Aurora goods for the goods of the Lawrence Manufacturing Company?

Ans. Have never done so in our experience.

Ques. 720. Would a person of ordinary intelligence in the trade mistake the brand of the Aurora "L L's" for the Lawrence "L L" goods?

Ans. Never.

Cross-examination by Mr. W. G. RAINEY:

Ques. 721. Are you very sure about that?

Ans. Very sure that any one of ordinary intelligence would never be mistaken.

Ques. 722. With what class of the trade do you deal?

Ans. With the jobbers of dry goods.

Ques. 733. You do not come in contact with the consumer or retail purchaser, do you?

654 Ans. To no great extent; sometimes meet a large retail trade.

Ques. 734. My question has reference to the consumer of the goods or purchaser from a retail merchant.

Ans. People in our business are not in the habit of standing at retail counters where they cut off goods.

Ques. 735. Repeated. Do you come into contact with the retail consumer or purchaser from the retail merchant?

Ans. As much as any one in our line of business would naturally come in contact with the retail trade.

Ques. 736. Last question repeated.

Ans. We do not sell to consumers.

Ques. 737. Then can you state whether the ordinary consumer or purchaser from the retail merchant would likely be deceived when seeing "L L" on brown sheetings, should he be familiar with the Lawrence goods and not familiar with the Aurora, in supposing such goods to be made by the Lawrence Manufacturing Co.?

Objected to as supposing an improbable and impossible case.

Ans. I don't know that I understand the character of that question.

Ques. 738. Question reread to the witness.

Ans. As far as my knowledge goes, all leading brands of goods exposed for sale on retail counters are folded with brand plain in view, so that an ordinary person could read for themselves the name of the mill; therefore could not be deceived.

Ques. 739. Do you state this to be a positive fact or simply an expression of your opinion?

Ans. I take it for granted that a purchaser who is competent to judge the quality of goods is also competent to read the brand.

Ques. 740. Why do you not answer my questions and not evade them, as you seem to be doing?

Objected to as an insult to the witness.

Ans. I intended to answer them as correctly as my judgment dictated.

655 Ques. 740½. Now, I repeat cross-question 23 (739). Do you state it to be a positive fact, which your answer to cross-question 22 (738) implies, that a retail consumer or purchaser could not be deceived on the hypothesis submitted to you, or that you mean to say it is your opinion he would not be deceived?

Objected to as having been sufficiently answered.

Ans. What was the hypothesis?

Ques. 741. I go back in order that the intelligent witness may comprehend me, and repeat cross-question 22 (738). Question repeated.

WITNESS: It is my judgment that a purchaser could not be deceived.

Ques. 742. Suppose a retail customer, such a customer belonging to the laboring class and of ordinary intelligence, should go into a

retail store, and being familiar with Lawrence "L L" sheetings, and should see brown sheetings folded so that only the "L L" could be seen, as stamped on the Aurora goods, would you not think it possible that such a customer would be likely to suppose that such goods were made by the Lawrence Manufacturing Company?

Ans. I should not think that any intelligent person in these enlightened times would buy goods simply from seeing them folded and without examination, especially when there are so many brands of "L L's" in the market.

Ques. 743. You have again evaded and not answered my question. You will please answer it categorically. Question reread.

Ans. In my judgment my original answer covered the point.

Ques. 744. Again reread to witness.

Ans. In my judgment, no.

Ques. 745. Suppose such a customer had never seen any brown sheetings branded with "L L" but the Lawrence goods, and was to see for the first time the Aurora "L L's," but so folded that
656 he only saw the letters "L L," would you not, then, think it likely that such a customer would suppose they were the Lawrence goods?

Ans. I do not suppose any customer would buy goods without examining them to know what he was buying.

Ques. 746. You have again evaded my question. I request it repeated and desire a categorical answer.

Ques. 747. Cross-question 29 (745) again repeated.

Ans. I don't think that is a supposable case; but I don't know that is what you want to get at.

Ques. 748. Assume the question to be a supposable one, then what is your answer.

Ans. I should suppose he would have knowledge enough of goods to judge for himself.

Ques. 749. Have you any bias or prejudice for or against either party to this lawsuit?

Objected to as incompetent.

Ans. No.

Ques. 750. Then why do you not answer my questions and not try to evade them?

Ans. I have answered all questions, according to my best judgment, from knowledge and experience with the dry-goods trade for the last fifteen years.

Ques. 751. Cross-question 29 (745) repeated.

Ans. My original answer is my answer to that.

Ques. 752. What is that answer?

Objected to by defendant, as the deposition shows for itself.

Ans. You have it before you.

Ques. 753. Do you refuse to answer it otherwise or to repeat your former answer?

Objected to as being intentionally unfair with the witness.

Ans. Will you read the former answer?

Ques. 754. You have stated you have no bias in this case; is that correct?

Ans. I have no bias in this case other than justice to all parties.

657 Ques. 755. Is it not true that you are the agent for the Aurora Cotton Mills?

Ans. It is.

Ques. 756. Is it not also true that you want the Aurora Cotton Mills to succeed in this lawsuit?

Objected to as irrelevant and immaterial.

Ans. I want the Aurora Cotton Mills to have what they are justly entitled to; nothing more.

Ques. 757. Do you want the mills to succeed in this lawsuit?

Objected to as having been answered and as immaterial.

Ans. If they are justly entitled to success, yes; if not, no.

Ques. 758. Do you know what this lawsuit is about?

Objected to as not being cross-examination.

Ans. As I understand the case, it is to establish the right for the use of the letters of the alphabet, or the letters "L L," as a trade-mark.

Ques. 759. Have you not given to some one representing the defendant in this case your opinion that the Lawrence Manufacturing Co. is not entitled to the use of "L L" as a trade-mark?

Objected to as immaterial.

Ans. I may have done so, as everybody else has.

Ques. 760. Do you state it to be a fact that everybody else has said that the Lawrence Manufacturing Co. is not entitled to "L L" as a trade-mark?

Ans. All those that have discussed the matter with me have implied as much.

Ques. 761. Then the substance of your testimony is that, in your opinion, the Aurora Cotton Mills has a right to brand their four-yard sheetings with "L L." Is that correct?

Ans. Yes.

Ques. 762. And holding such an opinion you want the Aurora Cotton Mills to succeed in this lawsuit, do you not?

Objected to as having been answered.

Ans. In my judgment the Aurora Cotton Co. are entitled to use the letters "L L;" and, if so, should succeed.

658 Ques. 763. How long have you handled brown sheetings stamped with "L L," other than the Lawrence goods?

Ans. I think about fifteen years, but I have not looked the matter up, and consequently may not be correct as to dates.

Ques. 764. Did you ever handle "L L" sheetings made by the Lawrence Manufacturing Co.?

Ans. No.

Ques. 765. What brand of goods, if any, fixes the market price on "L L" goods?

Ans. Every mill makes their own price, as far as my knowledge goes.

Ques. 766. Did you ever sell any Aurora "L L's" on memoranda, the price to be governed by the market price at a future date?

Ans. I may or may not; I could not say.

Ques. 767. Have you ever sold any "L L's" on memorandum, the price to be fixed at a future time by the market price; if so, what?

Objected to as not cross-examination.

Ans. That would be dating back farther than I can remember to-day. I may or may not.

Ques. 768. Don't you know it to be a fact that the "L L's" made by the Lawrence Manufacturing Co. are sold in the market to a greater extent than any other "L L" sheeting?

Ans. I do not, not knowing the capacity of the other mills which sell "L L's" in comparison with the production of the Lawrence.

Ques. 769. Do you not in your trade occasionally hear of the Lawrence "L L?"

Ans. We hear of every known brand in the market.

Ques. 770. Repeated.

Ans. As I stated before, we hear of every brand in the market, and consequently we hear of the Lawrence "L L."

659 Ques. 771. When you hear "L L" mentioned in your trade with reference to brown sheetings what goods come into your mind, or what do you think about?

Ans. Four-yard sheetings.

Ques. 772. Made by what manufactory or mill?

Ans. Made by any mill manufacturing a four-yard sheeting with a fifty-six by sixty count.

Ques. 773. Don't you think of the Aurora "L L" or the Hoosier "L L?"

Ans. In that connection if one of my customers was talking to me about an "L L" he would evidently name the brand, and, as we are agents for those two brands, certainly would suppose he had reference to them.

GEO. H. CURTISS.

ALONZO GEORGE, a witness produced on behalf of defendant, being duly sworn, deposes and says:

Ques. 774. Are you the same Alonzo George whose deposition was taken some weeks ago in Aurora in this cause on the part of the defendant?

Ans. Yes, sir; I am.

Ques. 775. How are you connected, if at all, with the defendant, The Aurora Cotton Mills?

Ans. I am treasurer of the Aurora Cotton Mills.

Ques. 776. Are you familiar with the stamp or brand placed by the Aurora Cotton Mills upon its four-yard brown sheeting?

Ans. I am.

Ques. 777. Describe that brand.

Ans. It is headed with a monogram A C M, Aurora Fine Sheetings, and a rising sun above the word fine and "L L" below the word sheeting.

Ques. 778. Will you produce a sample of the four-yard sheetings manufactured by the defendant, with their stamp or brand upon it, mark the same Exhibit X, and make it a part of this your deposition?

Ans. I will; this is it. (Witness produces the sample.)

Exhibit X, above mentioned and described by the witness, is offered in evidence on the part of the defendant.

660 It is stipulated that defendant's attorney may keep the said exhibit and produce it on the trial of the cause hereafter.

Here the defendant rests its testimony.

ALONZO GEORGE.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, P. H. T. Mason, notary public in and for the county of Cook, in the State of Illinois, hereby certify that the foregoing depositions of George H. Curtiss and Alonzo George were taken before me this 27th day of January, 1887, by consent of the parties, all formalities being waived; that the said witnesses were first duly sworn by me, and their said depositions were written out by me in their presence and signed by them in my presence; that there were present the said witnesses and Mr. N. J. Aldrich, representing the Aurora Cotton Mills, and Mr. W. G. Rainey, representing the complainant, the Lawrence Manufacturing Company, and that the defendant then rested its testimony.

Witness my hand and notarial seal this 27th day of January, A. D. 1887.

P. H. T. MASON,
Notary Public.

The seal of notary waived.

RAYMOND & RAINEY,
Solicitors for Complainant.

Fees for taking foregoing depositions, amounting to $5.00, paid by defendant, Aurora Cotton Mills.

P. H. T. MASON,
Notary Public.

I, A. J. Hopkins, solicitor for the Aurora Cotton Mills, certify that the foregoing 122 pages is a true copy of the original proof as the same appears on file in the case of The Lawrence Manufacturing

Company *vs.* The Aurora Cotton Mills, pending in the U. S. circuit court for the northern district of Illinois.

(Signed) A. J. HOPKINS, *Solicitor.*

661 Defendants read and referred to "Sheldon's Dry-Goods Jobbers' Reference Book, 1883," filed as "Exhibit D" to O'Bryan's deposition, page 86, advertisement of Lawrence Manufacturing Company, which is as follows:

[Vignette, Bull's Head.]

"Lawrence Manufacturing Company.

L L, X X, & X X X
Brown Cottons.

George C. Richardson & Co.,
Agents,
178 Devonshire street, 33 Federal street, Boston;
115 and 117 Worth street, New York."

The above is displayed similarly with the copy, with black type.

Defendants also referred to and read, as "Exhibit C" to O'Bryan's deposition, from "Sheldon's Dry-Goods Jobbers' Reference Book, 1882," page 40, Lawrence Manufacturing Company's advertisement, as follows:

[Vignette, Bull's Head.

"Lawrence Manufacturing Company.

L L, Y, X X, & X X X
Brown Cottons.

Heavy Brown & Bleached Canton Flannels.

George C. Richardson & Co.,
Agents,
178 Devonshire street, 33 Federal street, Boston;
115 and 117 Worth street, New York."

Defendants also referred to and read from the book of which the following is the title page, as "Exhibit E" to O'Bryan's deposition, to wit:

"Vol. — (number torn off.—Cl'k). No. 877. Sheldon's Weekly New York Price List, published by J. D. Sheldon & Co., No.
662 115 Worth street, New York. Wednesday, August 12th, 1885. Terms (with Jobbers' Reference Book), $5 per annum. Single copies, 25 cents."

Of the foregoing page 36, Lawrence Manufacturing Company's advertisement was read as follows:

[Vignette, Bull's Head.]
"Lawrence Manufacturing Company.

L L & X X
Brown Cottons.
Heavy Brown and Bleached Canton Flannels.
Smith, Hogg & Gardner,
Agents,
178 Devonshire street, 33 Federal street, Boston;
115 and 117 Worth street, New York."

And also page 44, as follows:

[Vignette, Bull's Head.]
"Lawrence
Brown Cottons
and
Canton Flannels.

For Sale by
All the Leading Dry-Goods Jobbers."

663 When defendant had concluded, complainant then read the following in rebuttal:

United States Circuit Court.

Northern District of Illinois.

LAWRENCE MANUFACTURING COMPANY *vs.* AURORA COTTON MILLS.

District of Indiana.

SAME *vs.* EVANSVILLE COTTON MANUFACTURING COMPANY.

Middle District of Tennessee.

SAME *vs.* TENNESSEE MANUFACTURING COMPANY.

Eastern District of Wisconsin.

SAME *vs.* BEAVER DAM COTTON MILLS.

Western District of Wisconsin.

SAME *vs.* JANESVILLE COTTON MILLS.

Depositions taken on this twenty-first day of February, 1887, at the office of and before Charles R. Clarke, No. 21 Park Row, New York, a notary public in and for the county of New York, in the State of New York, in pursuance of notice, in the presence of W. G. Rainey, solicitor for complainant; J. M. Dickinson, solicitor for Tennessee Manufacturing Company, who also appears for the defendants, Aurora Cotton Mills and Evansville Manufacturing Company; and I. C. Sloan, solicitor for Beaver Dam Cotton Mills and Janesville Cotton Mills; by consent, all formalities as to caption and certificate being waived.

664 CHARLES S. SMITH, being produced by complainant and having been duly sworn, deposed as follows:

(Questioned by Mr. RAINEY, for complainant:)

Q. 1. You are the same Charles S. Smith whose deposition has been taken in these causes, are you not?

A. Yes, sir.

Q. 2. In your previous deposition you stated that the Lawrence Manufacturing Company first branded its four-yard sheeting with L L in January or February, 1867, and, in substance, that the trade significance of L L when attached to sheetings means goods made by the Lawrence Manufacturing Company. Now, will you please state how soon after February, 1867, L L in the trade obtained this significance?

(Defendants except to the foregoing question on the grounds, first, that it is improper to state to the witness what his testimony was on his former examination; second, because the evidence called for is not in rebuttal.)

A. From 1869 to 1870, I think, that reputation was established.

Q. 4. Have you any way of stating the number of yards of L L sheeting sold by the Lawrence Manufacturing Company prior to 1872? If so, please state what was the output of such goods from February, 1867, up to 1872.

(Defendants except to the foregoing question on the ground that the evidence asked for is not in rebuttal.)

A. Yes; I have a memorandum in my pocket of the goods sold by the Lawrence Manufacturing Company during the years stated, taken from our books and the books of the mills.

Q. 5. Please look at such memorandum, and state the number of yards of L L sheetings it shows to have been made and sold by the Lawrence Manufacturing Company from February, 1867, up to 1872.

665 (Defendants except to the witness testifying from a memorandum, and except to the introduction of any copy from any books, the same not being the best evidence.)

A. (The witness reads from memorandum over the exception of defendants:) "Up to October 31, 1867, 763,385 yards; from that date up to April 25, 1868, 443,656 yards; next six months to October, 31, 1868, 702,629 yards; to April 30, 1869, 942,661 yards; to October 31, 1869, 1,883,310 yards; to April 30, 1870, 2,246,160 yards; to October 31, 1870, 2,407,894 yards; to April 30, 1871, 2,823,503 yards; to October 31, 1871, 2,770,344 yards; to April 30, 1872, 3,963,074 yards."

Q. 6. Independent of this memorandum you have just read from and the information derived therefrom, can you give us approximately the output of complainant's mill during this period of time?

A. Only except very generally; my recollection would be in ac-

cord with the memorandum, but I could not get it positively—the exact figures, I mean.

Q. 7. From February, 1867, to January, 1872, how were such goods spoken of in the trade and generally ordered by the trade?

(Defendants object to this question because not in rebuttal, and because the witness has already been examined in the testimony-in-chief on this proposition.)

A. As soon as the brand became established they were known to the trade and to our customers as L L's, belonging to the Lawrence Mills. When a customer came in to buy these goods his question would be, "What's the price of L L's?" using no other designation.

Q. 8. What would you understand him to refer to?

A. I should think he referred to the L L that we were agents of, made by the Lawrence Mills.

Q. 9. Please state again how soon after February, 1867, this brand of L L became established.

666 (Defendants except to this question as being a repetition and not in rebuttal.)

A. I should say in two and a half to three years from the time we commenced to make them they became well established.

Q. 10. While your firm were the agents for the complainant company, state whether it sold any L L sheetings to the firm of J. H. Wear, Boogher & Co., of St. Louis; if so, for how long and in what quantities.

A. We sold the firm for a good many years, almost from the time they went into business up to the time we ceased to be agents for the complainant company. I can't remember the quantity without referring to my memoranda, but we sold them considerable quantities. We ceased to be agents for complainant in February, 1886.

Q. 11. Do you know anything about a complaint made by said firm of J. H. Wear, Boogher & Co. about L L sheetings? If so, when was it, and state what you may know about it.

(Defendants except to this question as irrelevant and incompetent, and because the evidence is not in rebuttal.)

A. I think it was in 1883. They complained by letter and through their buyer in this market that the quality of a lot they had recently bought was not up to the standard in quality. They brought in a small sample to show us. We asked them to send us ten pieces by express, so we could judge of the complaint, which they did. I examined the goods, found them to weigh and count standard, and declined to make any allowance; wrote them in reply that if they were dissatisfied with the goods they could turn them over to Crow, Hargadine & Co., of St. Louis, and we would credit them with the full amount of the goods they complained of.

(Defendants except to the foregoing answer as incompetent, as hearsay, and *res inter alios acta.*)

667 Q. 12. I now ask you to examine a paper I now hand you consisting of three sheets, and state what it is.

A. It's a letter-press copy written by our firm, Geo. C. Richardson & Co., under date of September 10, 1883, to J. H. Wear, Boogher & Co.

By Mr. RAINEY: The paper referred to is offered in evidence as Exhibit "Charles Smith No. 1."

(Defendants except to the introduction of said paper in evidence on the ground that it is a copy and the original is the best evidence, and for the reasons stated under question and answer No. 11.)

Q. 13. I hand you another paper consisting of four sheets. Please state what it is.

A. It is a press-copy letter from our letter book, dated September 14, 1883, addressed to J. H. Wear, Boogher & Co., St. Louis, in my handwriting and signed "Geo. C. Richardson & Co."

By Mr. RAINEY: This paper is offered in evidence as Exhibit "Smith No. 2."

(Defendants except to this on same grounds as the last exception.)

Q. 14. Where are the originals of these two letters, Exhibits Nos. 1 and 2?

A. I don't know. I suppose they are in St. Louis. We mailed them to J. H. Wear, Boogher & Co.

Q. 15. Please state whether that firm ever returned to you any more than ten pieces of said goods?

A. No; only ten pieces.

Q. 16. Did they deliver the lot complained of to Crow, Hargardine & Co., as you requested?

A. No, sir.

(Defendants reserve an exception to the last two questions and answers if it should, upon further examination, appear that the evidence is hearsay.)

668 Q. 17. State whether Wear, Boogher & Co. ever complained to you or your firm at any other time about L L sheeting.

(Defendants except to the foregoing as incompetent, irrelevant, and not in rebuttal.)

A. This is the only time we ever heard of a complaint from them.

Q. 18. State whether after this complaint, in 1883, the firm of Wear, Boogher & Co. continued to purchase LL sheetings from you; and, if so, in what amounts as compared to the amounts purchased previously by them.

(Defendants make same exception as the last.)

A. I cannot answer with absolute exactness after that from memory, but they continued to use them in large quantities as long as we retained the agency of them—the L L's.

Cross-examination by defendant:

X Q. 19. The words "the L L's" were added to your last answer at the suggestion of complainant's counsel, were they not?

A. I did not so understand it.

X Q. 20. Did you not hear him repeat the words "the L L's" before you used them in your answer?

A. I don't know. They were so long in taking down the answer that I am not sure. He may have done so.

X Q. 21. Did not complainant's counsel ask you the question—No. 18—upon your suggesting the same to him, and after he had announced himself as through examining you?

A. Yes, sir.

X Q. 22. Can you, without referring to your memorandum, give the sales of the Lawrence L L goods—that is, the amount in yards—for the year 1868?

A. No, sir.

X Q. 23. Can you for the six months ending 1869?

A. No, sir.

669 X Q. 24. You have no recollection of the amounts to which you have testified except that they appear on your memorandum and you believe them to be correct copies of your books?

A. I have only a general recollection, but our business in L L's in those dates—that is, from 1869 to 1870—had grown to be large.

X Q. 25. Did you keep the books during that period from which this memorandum is made up?

A. No, sir.

X Q. 26. Did you make up this memorandum?

A. No, sir.

X Q. 27. Can you state the output or the sales for the year 1872, in yards?

A. No, sir; not exactly.

X Q. 28. From your recollection what was the output or sale in yards during the six months ending April 30, 1872?

A. Can't tell, without referring to the memorandum, exactly.

X Q. 29. Have you any recollection at all without referring to the memorandum?

A. Yes, sir.

X Q. 30. Then, please state the number of yards.

A. I should say in the neighborhood of two millions and a half.

X Q. 31. Have you any recollection, without looking at the memorandum now, of the number of yards sold for the six months ending April 30, 1870?

A. No, sir; I only know it increased from year to year largely. It would be guess-work.

X Q. 32. When you spoke in this deposition of your customers calling for L L and using no other designation did you, during that time, handle the Atlantic L L or any other brown cotton sheeting branded L L except that made by the Lawrence Mill?

A. No, sir.

X Q. 33. How do you know that J. H. Wear, Boogher & Co.

670 never made but one complaint to your house? May not such have been done during your absence and not have been called to your attention?

A. At the time I wrote the letter to them which has been put in evidence, Exhibit No. 2, I made the statement in that letter, referring to all complaints on Lawrence L L, after careful inquiry.

X Q. 34. Do you mean to say that you know of your own knowledge that no subsequent complaints came to your house from said parties about said goods?

A. No; but it is improbable that any such complaint could have been made without my attention being called to it.

CHAS. S. SMITH.

Subscribed and sworn to before me this 21st day of February, 1887.

[SEAL.] CHAS. R. CLARKE,
Notary Public, N. Y. Co.

WILLIAM F. FORBY, being duly sworn for complainant, deposes and says:

"I am in the employ of Townsend & Yale, of New York, and, at the request of Mr. Warner of that firm, went to the office of Julius A. Clifton, at Nos. 256 and 258 Church street, in the city of New York, and upon inquiry there was informed that the firm of Aldrich, Iddings & Clifton occupied the lower floor of the building, Nos. 256 and 258 Church street. J. A. Clifton's name was on the door. I was also informed at said numbers that the firm of Mackey, Nesbitt & Co. had an office on the same floor. The old numbers of the building were 168 and 170.

"WILLIAM F. FORBY."

The defendants, in due season, objected and excepted to the foregoing on the ground of its being immaterial, incompetent, and hearsay testimony.

671 Subscribed and sworn to before me this 21st day of February, 1887.

[SEAL.] CHAS. R. CLARKE,
Notary Public.

Further taking of testimony adjourned, by consent, to February 22, 1887, at 11 o'clock, a. m.

CHAS. R. CLARKE.

My fees, $3.40, paid by complainant.

CHAS. R. CLARKE, *Notary.*

EXHIBIT SMITH No. 1.

"SEP. 10, '3.

"Messrs. J. H. Wear, Boogher & Co., St. Louis, Mo.

"DEAR SIRS: We have yours of the 6th inst.; have also been

waited upon by Mr. Sparks with two head ends of goods, both of which have been roughly handled. We cannot accept them as conclusive, and must ask you to send us, as requested, by express, 10 pieces of Lawrence L L's which you regard below the standard and on account of which this correspondence has arisen.

"We beg to say that we think your prejudices have had a little the better of your good judgment.

"You have apparently thought the tally head another mark for an inferior grade, and that it was placed there for that reason. If so, you are entirely in error. Our letter of the 3rd explained the whole situation.

"Even these samples both count exactly alike, and exactly as a piece taken from a sample bale here.

"Please send the 10 ps. at once.

"Yours very truly,

"GEO. C. RICHARDSON & CO.,
"Per W. M. SMITH."

672 EXHIBIT SMITH No. 2.

"SEP. 14th, '3.

"Mess. J. H. Wear, Boogher & Co., St. Louis, Mo.

"DEAR SIRS: A complaint regarding the quality of Lawrence L L's naturally excites our careful attention and grave consideration. The complaint you made only excited in us a desire to ascertain if you had cause of complaint, and then do you justice and apply the remedy. We pride ourselves on uniformity in this cloth and deem it the exact truth to say that yours is the first and only complaint we have had regarding the quality of this cloth for fifteen years. We desired to give your complaint most serious and careful investigation, and wrote you twice to send by express 10 ps. showing the quality complained of. This very reasonable request you have not seemed willing to comply with. You send us a small ps. which was not large enough to decide a matter involving the production of one of the largest mills in the county, and besides the swatch you sent us counted full standard.

"Now, this writer has read over all the correspondence that has passed between you and G. C. R. & Co. on this subject, and we fail to see anything from us, addressed to you, that should be characterized, as your letter of the 14th rec'd this m'ng does characterize, as 'an effort at bravado.'

"We must be frank enough to say to you, with all courtesy and good feeling, that we cannot make any allowance on L L's upon any evidence yet furnished us by you; and, in order to save you any further trouble in the matter, you will be good enough to oblige us
673 by delivering to our friends, Mess. Crow, Hargadine & Co., any and all L L's, whether in order or open pieces, furnishing us with an invoice of the same, and we will credit your Co. with it.

"Yours truly, GEO. C. RICHARDSON & CO."

BOSTON, *February* 22, 1887.

Met pursuant to adjournment from New York from February 21, 1887.

Present, as before: W. G. Rainey, for complainant, and J. M. Dickinson, for all the defendants.

Mr. LUCIUS M. SARGENT states—

That he is the treasurer of the Lawrence Manufacturing Co.; that he had prepared a list of the number of bales of "L L" sheetings sold to J. H. Wear, Boogher & Co., of St. Louis, by the Lawrence Manufacturing Co., through its agents, from March, 1878, up to October, 1886, which are set forth upon a paper hereto attached as "Exhibit Sargent," aggregating for the year 1878, 65 bales; 1879, 100 bales; 1880, 140 bales; 1881, 190 bales; 1882, 224 bales; 1883, 175 bales; 1884, 188 bales; 1885, 125 bales; 1886, 90 bales.

LUCIUS M. SARGENT.

The foregoing is excepted to as irrelevant and as not on rebuttal, and it is agreed that the defendants may introduce witnesses to contradict the correctness of said statements should they see proper to do so.

Oath of witness waived.

W. G. RAINEY,
Sol'r for Complainants.
J. M. DICKINSON,
Sol'r for Defendants.

674 EXHIBIT SARGENT.

Sales of "L L" to Messrs. W. B. & Co. to Date.

		Packages.	
1878.			
March	25	10	Wear, B. & Co.
May	1	5	J. H. Wear & Co.
June	29	10	"
July	30	10	Wear, B. & Co.
		5	"
Aug.	31	5	"
Sept.	30	10	J. H. Wear, B.
Nov.	1	10	Wear, B.
		65	
1879.			
Jan.	31	20	J. H. Wear.
Apr.	30	25	"
June	30	20	Wear, B.
Oct.	31	25	"
"	31	10	"
		100	

1880.			
Jan.	2	25	J. H. Wear, B. & Co.
Apr.	20	25	Wear, Boogh.
July	31	30	J. H. Wear & B.
Sept.	25	10	Wear, Boogh.
"	30	25	"
Nov.	30	10	J. H. Wear.
"	31	15	Wear, Boogh.
		140	
675 1881.			
	Mar. 17	25	J. H. Wear.
Mar.	31	25	J. H. Wear, B.
"	31	25	"
May	2	20	Wear, Boogher.
July	30	25	Wear, Boog.
Aug.	15	20	Wear, Booghr.
Sept.	1	25	"
Oct.	31	20	Wear, B. & Co.
Dec.	5	5	J. H. Wear, Boogher & Co.
		190	
1882.			
Jan.	15	20	J. H. Wear, Boogher & Co.
March	25	20	"
Apr.	1	13	"
May	1	7	"
June	20	10	"
July	31	15	"
"	31	10	"
Aug.	31	15	"
Sept.	5	10	"
"	15	10	"
Oct.	10	10	"
Nov.	1	10	"
Dec.	20	10	"
"	30	34	"
"	30	50	"
		244	
1883.			
March	5	30	J. H. Wear, Boogher & Co.
"	30	20	"
July	10	40	"
"	31	10	"
Aug.	15	50	"
Nov.	1	25	"
		175	

676 1884.

Jan.	31	75	J. H. Wear, Boogher & Co.
March	21	25	"
June	30	3	"
"	30	7	"
July	31	3	"
Aug.	12	10	"
Sept.	25	10	"
"	30	10	"
Nov.	15	10	"
"	30	35	"
		188	

1885.

March	25	10	J. H. Wear, Boogher & Co.
"	31	15	"
Apr.	30	10	"
May	15	25	"
Sept.	2	25	"
Nov.	2	40	"
		125	

Sold by Townsend & Yale.

1886.

Apr.	24	10	J. H. Wear, Boogher & Co.
May	3	15	"
June	30	25	"
July	31	5	"
Aug.	23	5	"
"	27	5	"
Sept.	3	5	"
"	17	5	"
"	29	5	"
Oct.	16	10	"
		90	

We certify that this is a correct copy of the rebutting proof, the original of which is on file in the United States circuit court for the northern district of Illinois, in the case Lawrence Manufacturing Company *vs.* Aurora Cotton Mills.

RAIMOND & RAINEY,
Sol's for Complainant.

676½ And thereupon the following opinion was delivered by the court and filed July 1st, 1887, to wit:

677 *Opinion of the Court.*

The United States Circuit Court, Middle District of Tennessee. In Chancery.

THE LAWRENCE MANUFACTURING CO.

vs.

THE TENNESSEE MANUFACTURING CO.

This suit is brought to restrain the defendant from using the capital letters "L L" upon brown cotton sheetings manufactured and sold by it on the ground that said letters constitute an essential feature or portion of complainant's trade-mark by which it designates cotton sheetings of a particular quality of its own manufacture, which it is claimed the defendant infringes by using said letters upon sheeting of the same class or grade, and also to recover damages for said infringement.

The bill, after setting out several grades into which sheetings are generally classed, according to weight, one class including sheetings of such weight that 2.85 yards thereof weigh a pound, another of such weight that 3 yards weigh a pound, and a third class of such weight that 4 yards thereof weigh a pound, with the differences which exist, as to excellence, quality, and guaranties, between rival manufacturers of such goods, etc., alleges that "prior to 1870 the complainant adopted and thereupon became duly vested with the exclusive right to use a label or trade-mark for all goods of its manufacture coming within said third class to distinguish sheetings of its manufacture from sheetings of the same general class manufactured by others, the substantive, distinctive, and chief feature of which label was and is an arbitrary sign or symbol, consisting of the capital letters "L L," prominently and separately appearing upon such label or stamp; and said trade-mark, with certain environments, which have been changed from time to time, has been so used by complainant since said date of adopton, and, to wit, for more
678 than fifteen years, and has been imprinted upon each and every piece or bolt of such sheetings of said third general class made and sold by complainants during said period; and, further, said trade-mark was so adopted by your orator for the purpose of distinguishing sheetings of its manufacture of said third general class from similar goods manufactured by others, and then known in the trade under distinctive trade-marks, such, for instance, as the manufactures known as "Agawam F's" and "Atlantic P's." In connection with said trade-mark or substantive element of said label, under and in connection with which the trade reputation of complainant has been established, as hereinafter alleged, complainant has used the words "Lawrence Mills" and the word "sheetings" in different juxtapositions, and also at times a picture or representation of a bull's head, and at other times a picture or representation of a "bull rampant"—that is, of the whole body of a bull in a rampant position, and, in connection therewith and underneath

the same and in a separate position, has always used said capital letters "L L" as and for the purpose aforesaid; that at great expense and by years of endeavor your orator has earned and acquired a trade reputation of great value as a manufacturer of said sheetings under its said trade-mark, with this result, that sheetings of the said third general class of your orator's manufacture have come to be universally known as "L L sheetings," and sheetings so known, named, and called for import the excellent raw material, the method and care of manufacture, and the general guarantee of excellence and lasting quality for which your orator has a long, valuable, and thoroughly established reputation as to all goods of its manufacture."

679 It is further alleged that since complainant became vested and while it continued to be vested with the exclusive right to the use of said trade-mark the defendant herein has, since April, 1885, been manufacturing and selling large quantities of said sheetings of said general third class, upon which, and for the purpose of taking advantage of the complainant's trade label, trade-mark, and trade reputation, defendant had placed a stamp or label in imitation of its stamp or label, such imitation by defendant consisting in stamping or printing on its said sheetings the capital letters "L L" separately and prominently from the other parts of its label; that said acts and doings of defendant tended to deceive the public, constituted a fraud upon the public as well as upon complainant, and that the wrongful use of said letters by the defendant was for the purpose and with the tendency and effect of appropriating a part at least of the good will and trade reputation of the complainant, against which relief was asked by injunction and for an account of the damages thence resulting, etc.

The answer admits that in the trade of sheetings there are recognized classes based upon the difference in weight of the goods per yard; that in one of such classes 2.85 yards thereof weigh a pound, in another class three yards weigh a pound, in the third grade 4 yards weigh a pound, and in the fourth 5 yards weigh a pound; that defendant has, since April, 1885, stamped upon its cotton goods weighing ¼ of a pound to the yard the words "Cumberland L L Sheeting 4-4;" that the word "Cumberland," the name of the well-known river near which its works are located, was used to designate its manufacture and as a trade-mark; that the letters "L L" in connection with "sheeting" were used to denote the class to which said sheetings belong, according to the usages of the

680 trade, and the figures "4-4" to indicate that the goods are one yard wide. The answer then proceeds to controvert in detail the material allegations of the bill. It denies that complainant adopted said letters "L L" as its trade-mark or as forming any substantive part of the same, and insists that said letters were designed and intended to designate and distinguish this grade of sheeting from other classes or grades made by it; that complainant's trade-mark, if it has any, consists in the bull's head and words "Lawrence Mills" stamped upon its goods; that "L L" has always in the trade been understood to indicate grade, class, or quality and

not origin or ownership; that at the time complainant commenced the use of these letters and for many years prior thereto they had acquired in the trade the general and fixed meaning of four-yard sheeting, and that it indicated, without respect to ownership, that the goods on which they were stamped were of a general class or grade known to the trade as four-yard sheeting; that a number of mills besides complainant had used said letters for many years to indicate this grade, using them in connection with their several names or trade-marks, but not as trade-marks; that complainant was not the first to employ or appropriate these letters as a label or brand upon goods of this general class; that in fact the Atlantic Mills, another cotton manufacturing company, had used said letters on sheeting of the same grade or character before complainant did, and that said letters were generally known in the trade in connection with brown cotton sheetings before complainant commenced stamping them on its goods. It is further averred that besides its "Lawrence Mills sheeting," labeled "L L," the complainant is now, and has been since it commenced the use of said letters, manufacturing other sheetings of the same weight
681 and class, but of a different or inferior quality, which it brands as "Shawmut," with the addition of said capital letters "L L," impressed upon them in the same way as upon those branded "Lawrence Mills." The defendant denies that in using said letters upon its four-yard sheeting there was any intention to simulate the label of complainant or to impose its goods upon the public as the goods of complainant, and that no purchaser of ordinary caution and ordinary intelligence has ever been or will be deceived by any similarity in the two labels into mistaking the defendants' goods for those of the complainant, etc.

Upon the issues thus presented by the pleadings the parties have examined a large number of witnesses, engaged in or connected with the trade in cotton sheetings in various cities and sections of the country. This evidence is too voluminous to be recited in full or commented on in detail. It has been carefully examined by the court, and the general conclusion of facts established by or deducible from it, so far as material to the proper determination of the questions involved, will be briefly stated.

It appears that prior to 1867 the complainant employed as its brand on third-class or four-yard sheeting manufactured and sold by it the picture of a bull in a rampant position, in connection with the words "Lawrence Mills" (the name by which the Lawrence Manufacturing Company was commonly known) sheeting, and beneath these was the single capital letter "L." In January or February, 1867, the complainant made the addition of another capital letter "L" to its said label or device, forming the double "L," which it has since continuously used on said goods. The reason for this change and the circumstances under which it was made are
682 stated by Charles S. Smith, general selling agent of complainant from 1865 to 1866, as follows: "We were induced to change (from 'L' to 'L L') because it was a time when cotton goods were depreciating. We had made considerable sales of the single 'L,' but

a party who had bought a large lot was underselling us at a price lower than we could afford to meet, and I suggested that in order to keep them out of this competition the mills should change the fold of the single 'L' from a narrow to a wide fold and to put on a double 'L L.'" This was accordingly done. When this change was made by placing the double "L" on its four-yard goods the complainant was a well-known manufacturing company, having manufactured and sold large quantities of said third-class sheetings. In place of the "bull rampant" the complainant, in 1883, substituted the "bull head," so that its full brand in all four-yard sheeting of first quality is now the "bull's head," in connection with the words "Lawrence Mills sheeting," and underneath these the letters "L L." Cotemporaneous with its employment as aforesaid of the capital letters "L L" on its third-class goods of first quality the complainant put into the trade a brown cotton sheeting of the same weight as that stamped with the bull "rampant," the words "Lawrence Mills" and "L L," which it branded "Shawmut L L sheeting," and which, on account of imperfections and defects, was and is inferior to and of less value than the former. These "Shawmut L L sheetings" have been put on the market by complainant continuously since 1867. It is shown that complainant makes two other kinds of brown sheetings, graded according to weight and stamps, one "X X" and the other "X X X," to indicate or denote the distinction in grade. Through its authorized selling agents the complainant has for many years advertised its sheetings in Sheldon's Pamphlets, a well-known
683 dry-goods advertising periodical, heading its advertisement with the picture of a bull's head (or bull rampant), the words "Lawrence Mills," and then following are the letters "X X," "X X X," "L L." The complainant makes other goods besides sheetings, called flannels and denims, on which it uses the picture of a bull's head and the words "Lawrence Mills," similar to that used on the four-yard sheetings, but not the letters "L L." It is shown by the proof that letters of the alphabet are and for many years have been used by manufacturers to designate and distinguish different grades, classes, and qualities of goods made by them; that almost the entire alphabet is used in this way, some mills employing a great many different letters, so that it is understood generally in the cotton-goods trade that letters are thus used to designate grade, class, or quality. It is also generally understood in the trade that "L L," as stamped on the complainant's sheeting, means four-yard goods or goods of the third class or grade, and that the words "Lawrence Mills," in connection with the bull's head, are used or employed to designate or indicate the maker or manufacturer. These goods are always invoiced by complainant to its selling agents and to the trade as "Lawrence" or "Lawrence Mills L L," and they are thus generally known in the trade and are so spoken of and distinguished, except, in some instances, persons who have been more familiar with them or have handled them exclusively, call them simply "L L's," thereby meaning the sheeting made by the Lawrence Company; but generally the complainant's said sheetings are known and described as "Law-

rence L L" or "Lawrence Mills L L," just as other brands of sheeting stamped with "L L" are generally known in the trade
684 and spoken of as "Beaver Dam L L," "Badger State L L," "Aurora L L," "Cumberland L L," etc. The signification of the letters "L L" stamped upon cotton sheetings, as indicative of grade, class, and quality, was generally understood in the trade when defendant commenced the use of said letters in 1885. The fact is clearly established that the Atlantic Mills, of Lawrence, Massachusetts, stamped "L L" upon brown cotton sheeting of its manufacture in the years 1860, 1862, 1864, and 1865, and from 1872 down to the present time. There were cessations (or "interregnums," as the witness J. C. Bowker calls it) in the manufacture of said goods by the Atlantic Mills from time to time between 1860 and 1865 and between 1865 and 1872, none being thus stamped between the latter dates. The weight of the Atlantic goods made in 1860 and stamped with the letters "L L" was 4.19 yards to the pound; in 1862 the goods so stamped weighed 4.36 yards to the pound, and in 1863 and 1864–'5 their weight was 4.56 yards to the pound. In 1872, when the Atlantic Mills again commenced placing the "L L" on its sheetings, they weighed and have since continued to weigh 5 yards to the pound. It further appears that said Atlantic Mills, in 1860, made a grade of brown sheeting which weighed 3.89 yards to the pound, and which it stamped with a single "L." The Atlantic Mills employed said letters to distinguish different grades of goods, and has continued to use letters for that purpose. It is fairly deducible from the evidence that the Atlantic "L L" cotton sheetings were in the market in 1867, when complainant first commenced using said letters on its third-class sheetings. Said Atlantic goods are and were of the same general character and class as those upon which complainant stamps "L L." It is shown that the Atlantic goods manufactured since 1872 and stamped with said letters are so near alike in ap-
685 pearance to the Lawrence "L L" sheeting that ordinary buyers and even experts cannot by looking at them distinguish them from each other. On both of them the letters "L L" are solid block blue letters of nearly the same size. It appears that the Atlantic "L L" and the Lawrence "L L" sheetings are both used for the same general purpose, such as shirting, underwear, etc., and that, while they are readily distinguishable from each other by brokers and jobbers, they compete with each other with retail dealers and the purchasers for consumption. Representative merchants, wholesale and retail, in several large cities—Chicago, Cincinnati, St. Louis, Indianapolis, Nashville, New York, Boston—state that the Atlantic "L L" sheetings were known in the trade before the Lawrence "L L's" or any other "L L" goods. It is shown that neither an expert nor an ordinary purchaser can tell by mere inspection whether a sheeting will run 4, 4½, or 5 yards to the pound; that by looking only at the letters "L L," the Lawrence "L L" and the Atlantic "L L" sheeting might readily be mistaken the one for the other. The complainant's witness, Lurie, of Chicago, with both sheetings folded so as to expose only the "L L," could not tell one from the other. It is further shown that, looking only at the let-

ters "L L," purchasers would as readily mistake the inferior "Shawmut L L" sheeting of complainant for its "first" or regular "Lawrence L L" sheeting as they would the defendants' "Cumberland L L" goods.

It appears that Jno. V. Farwell & Co., of Chicago, have, for the past six or seven years, been using a private brand for sheeting they sold, known in the trade as "Albany L L;" that in 1864, with full knowledge of this fact, the complainant stamped for said Farwell & Co. 150 bales of its four-yard sheetings with the label
686 "Albany L L," the stamp being furnished by Farwell & Co., and returned to them with the goods, which were sold in the market as John V. Farwell & Co.'s "Albany L L" sheeting.

The evidence shows that complainant has all the while known of the Atlantic Mills using the "L L" on its goods; that for more than six years before the commencement of this suit it has been aware of the fact that numerous other manufacturers were stamping said letters on their four-yard cotton sheeting, and that it never objected until about the time of bringing this suit and one of like character against the Aurora Cotton Mills, at Chicago. It is not shown that the brand of defendant has ever been mistaken for that of the complainant. There is no direct evidence that complainant, when it commenced using the "L L" letters on its third-class goods, adopted them for the purpose of making them its trade-mark, or any substantial or material part thereof. It does not appear that the single "L" used prior to 1867 constituted, in whole or in part, its trade-mark. The Atlantic Mills were using the single "L" on one grade or class of goods, merely to indicate quality, from 1862 up to 1868.

Under these facts and circumstances the question is presented whether the complainant can successfully claim the exclusive right to use the capital letters "L L" on third-class cotton sheeting running four yards to the pound. In other words, has it established in and to said letters for four-yard sheeting a valid trade-mark, which has been defined to be the name, symbol, figure, letter, form, or device adopted and used by a manufacturer or merchant in order to designate the goods that he manufactures or sells, and to distinguish them from those manufactured or sold by others, to the end that they may be known in the market as his, and thus enable
687 him to secure such profits as result from a reputation for superior skill, industry, workmanship, or enterprise?

It is not deemed necessary, in the view we take of the facts and the law applicable to the same, to enter upon any extended review of the authorities on trade-mark law, or to consider the general abtract proposition whether letters and numerals can, in and of themselves, be the subject of appropriation so as to constitute a valid trade-mark or form an essential and material element thereof, a point discussed at the hearing by the learned counsel for the complainant. It may be conceded that letters of the alphabet and figures are, in some forms and combinations, capable of such appropriation under the authority of Boardman *vs.* Meriden, 35 Connecticut, 402; Gillott *vs.* Esterbrook, 48 New York Rep., 374; Lawrence

Co. *vs.* Lowell Mills, 129 Mass. Rep., 325; Shaw Stocking Co. *vs.* Mack *et al.*, 12 Fed. Rep., 707, and Kinnehan *vs.* Bolton, 15 Irish Ch. Rep., 75. In this last case the letters "L L" were sustained as a valid brand for a certain article of whiskey.

Still the vital question remains, Do the capital letters "L L," in the present case, constitute a substantial, material, or essential element in complainant's trade-mark so as to give the Lawrence Company the exclusive right to use the same on cotton sheeting of the third class, weighing four yards to the pound? The general principles of law which, under the facts and circumstances above stated, must control the determination of that question are well settled by the decisions of the Supreme Court in the following trade-mark cases: Canal Co. *vs.* Clark, 13 Wallace; McLean *vs.* Fleming, 96 U. S. Rep., 245, and Manufacturing Co. *vs.* Trainer, 101 U. S. Rep., 51.

688 These cases recognize the following propositions, well settled in the law of trade-marks:

1st. That in order to entitle a person to the exclusive use of a mark, device, or symbol as a trade-mark it must appear that the purpose at the time of adoption was to identify the maker or manufacturer with the vendible article to which it is attached—that is, such symbol or mark must point distinctively, either by itself or by association, to the origin, manufacture, or ownership of the article on which it is stamped. In other words, to constitute a valid trade-mark it must appear that the mark or symbol was originally designed, as its primary object and purpose, to indicate the producer of the commodity and to distinguish it from like articles manufactured by others.

2nd. That if it appear that the device, mark, or symbol was adopted and placed upon the article for the purpose of indicating its class, grade, style, or quality, or for any such purpose other than a reference to or indication of its origin or ownership, it cannot be upheld as a trade-mark. This is but a necessary corollary of the first proposition.

3d. That this exclusive right to the use of the mark or device constituting a trade-mark being founded on priority of appropriation, if it appear that the claimant was not the first to use or employ the mark on the same or like articles of production, he will not present such a title to or right in the design as will entitle him to protection.

If, under the application of these rules to the facts of the case under consideration, it can be held that complainant has established the existence of a trade-mark in the letters "L L," or that said letters form a substantive, distinctive, and chief feature of its trade-mark, then the equitable jurisdiction of this court may be called into exercise in its behalf if it further appear—

689 1st, that the defendant has imitated or pirated said mark; 2nd, that this imitation amounts to a false representation, express or implied, designed or accidental, which enables the imitator to sell his goods as those of the complainant, and, 3d, that such imitation is made without license or acquiescence of complainant.

Now, what was the object and design of the complainant in adopting and stamping the letters "L L" on its four-yard sheetings? Was it to indicate the origin of such sheetings; to identify them with complainant's ownership or manufacture and distinguish the same from those of a similar class and character manufactured by others, or was it done as descriptive of the goods or to indicate their grade, class, quality, style, or weight? There can be little or no doubt as to the correct answer that must, under the proof, be given to these essential questions of fact on which the rights of the parties hereto depend. It is perfectly clear from the account which complainant's agent Smith gives of the change from the single "L" to the double "L L," made in 1867, that the purpose and design in adopting the latter was not to indicate origin or ownership or to distinguish the sheetings on which said letters were stamped from similar goods manufactured by others, but that its primary object was to denote its class, quality, or grade, and to represent it to the public as being different goods in class and quality from those primarily sold by complainant under the single "L" stamp. The double "L L" was adopted "because it was a time when cotton goods were depreciating. We (the Lawrence Co.) had made considerable sales of the single 'L,' but a party who had bought a
690 large lot was underselling us at a price lower than we could afford to meet, and I suggested that, in order to keep them (four-yard sheetings thereafter to be made and sold) out of this competition, that the mills should change the fold of the single 'L' from a narrow to a wide fold and to put on a double 'L L.'" It is here clearly shown that the avowed object and purpose of the change from the single to the double "L L" was not the adoption of another trade-mark or a new and substantive addition to its existing trade-mark, but the intention was simply to keep the sheetings thereafter to be sold out of competition with precisely the same goods previously sold and then on the market. The change to the double "L L" was not made to distinguish complainant's four-yard sheetings from similar goods manufactured by others, but to prevent identification with its own goods of the same grade, class, and quality previously sold, and which the purchaser was using in competition with it. The double "L L" was manifestly intended to convey to the public the impression that the goods on which they were stamped differed from or were superior to those already sold. How else were they to be kept out of competition with those already in the market and which were underselling the complainant? How was that competition to be avoided by such a change, except by inducing the belief on the part of the future buyers that the goods on which "L L" was stamped were different from or superior to those of the same quality sold under the single "L" stamp? It may well be doubted whether the claimant of a symbol or mark having its origin in such purpose can successfully invoke the aid of a court of equity in its protection. It is settled by many authorities that a lack of truth debars a trade-mark from protection; that the tale told by
691 the symbol must be sincere, and that the instant it ceases to be truthful in spirit as well as letter it becomes an instru-

ment of fraud and is not lawful. In Ford *vs.* Foster, L. R., 7 Ch., 611, it was said: "According to the rule *ex turpe causa non oritur actio* if a trade-mark contain a false representation, a representation calculated to mislead the public, a man cannot by using that which is itself a fraud obtain an exclusive right, or, indeed, any right at all."

In Manhattan Medicine Co. *vs.* Wood *et al.*, 108 U. S. Rep., 218, it was held that, as the object of a trade-mark was to indicate the origin of manufactured goods, a person who affixes to goods of his own manufacture a trade-mark which declares that they are goods of the manufacture of some other person thereby commits a fraud on the public which no court of equity will countenance. The same wholesome principle would seem to apply to the case of a party who, having sold large quantities of goods of his own manufacture under one brand, and thereafter, while such goods were still in the market, changes his brand on precisely similar goods in all respects for the avowed purpose of relieving them from the competition of those alread sold, the object to be accomplished being only attainable by a misleading representation to the public to the effect that the goods with the new stamp are different from those previously made and sold, and that they are also superior as indicated by the employment of the double letters, which, according to the well-known usages of the trade, signify progression in grade or quality.

But, whether complainant is debarred from relief on the ground that its change to and employment of the double "L L" was designed to mislead the public into believing that the sheetings with that stamp were different in grade or quality from those al-
692 ready sold, it is, however, very clear that those letters were not adopted with any purpose of identification of manufacture or to indicate origin or ownership, but were intended as a new descriptive mark or symbol to designate the class, grade, or quality of the sheetings on which it is stamped. The history of its adoption, taken in connection with the fact that the complainant then had in the "bull rampant," with the words "Lawrence Mills sheeting," a distinct, substantive trade-mark, indicating origin and identifying its goods, leave no room to doubt that the device or symbol "L L" was intended to represent the first quality of third-class sheeting and not its origin, manufacture, or ownership. The case, in all its material facts, is not near so strong in favor of the complainant's claim as existed in "Manufacturing Company *vs.* Trainor, 101 U. S. Rep., pages 52–3. There it appeared that the Amoskeag Manufacturing Company engaged in the manufacture of ticking, which, prior to 1834, was marked with a label consisting of a certain device within which was printed in red colors the name of the company, its place of manufacture, the words 'power loom,' and in the center the single letter 'A' or 'B' or 'C' or 'D,' according to the grade of excellence of the goods. In 1834 the company made an improvement in its manufacture by which it produced a grade or quality of ticking superior to any which it had previously manufactured. For goods of this quality it used in its label in place of the single letter 'A' the three letters 'A C A.' The original device, with its colored border

and printed words, indicating the company by which and the place where the goods were manufactured was retained." * * * The question was whether the said letters "A C A" constituted a valid trade-mark. The rest of the device was only a label, and the claim to the trade mark rested alone upon said letters "A C A" adopted
693 cotemporaneously with the improvement made by the company in the grade or quality of its ticking. It was there contended for the complainant "that the combination was adopted and used to indicate not merely the quality of the goods, but also their origin as of the manufacture of the Amoskeag Company." On the part of the defendant the contention was "that the letters were designed and are used to indicate the quality of the goods manufactured and not their origin." After a review of the general principles of the law as to trade-marks the court said: "It is clear, from the history of the adoption of the letters 'A C A,' as narrated by complainant, and the device within which they are used, that they were only designed to represent the highest quality of ticking which is manufactured by the complainant, and not its origin. The device previously and subsequently used stated the name of the manufacturer, and no purpose could have been subserved by any further declaration of that fact; and, besides, the letters themselves do not suggest anything and require explanation before any meaning can be attached to them. That explanation, when made, is that they are placed in the device of the company when it is affixed to the finest quality of its goods, while the single letters are used in the same device when it is attached to goods of an inferior quality. They are never used by themselves, but merely as part of a device, containing, in addition to the border in red, several printed terms. Alone the letters convey no meaning; they are only significant as part of the general device constituting the trade-mark. Used in that device to denote only quality, and so understood, they can be used by others for a similar purpose equally with the words 'superior' or 'superfine,' or other words or letters or fixtures having
694 a like signification." This language applies in all its force to the case under consideration. Here the device above the letters "L L" contains not only the complainant's name, "Lawrence Mills," the name of the goods, "sheetings," and the picture of the "bull rampant" or "bull's head," which constitute a trade-mark, as distinguished from a label, giving all the information required as to the origin or ownership of the goods, while the letters "L L" alone indicate the quality of the sheetings. If the letters do not perform that function, then complainant, contrary to the well-established custom of the trade and of all manufacturers of cotton goods, has its first quality of third-class sheetings on the market without any mark, symbol, or sign to inform the public of their quality. When asked for an explanation of the letters "L L," which in and of themselves convey no meaning, we are told that they were adopted to distinguish its later production from sheetings of the same character, class, grade, and quality which the complainant had previously sold in large quantities, and to keep them out of competition with such goods in the hands of purchasers from complainant.

Said letters were not only intended to indicate the quality of the sheetings on which they were stamped, but also to represent an admitted untruth, that they were different goods from those previously sold. They cannot, under the authorities, constitute a valid trade-mark such as will give complainant the exclusive right to use the same on third-class sheeting, weighing ¼ of a pound to the yard.

It is insisted on behalf of complainant that the letters "L L" indicate not merely the grade, class, or quality of the sheeting, but also represent its origin, manufacture, or ownership. Whether letters by themselves or in combination can be employed to
695 represent both the grade or quality of goods and their origin, thus performing at the same time the double office of trade-mark and description or classification of the article to which they are affixed, is a question not discussed in either of the Supreme Court decisions above referred to. The theory that the letters "L L" signify or possess the dual meaning contended for is unsupported in point of fact by the evidence. But suppose it actually existed, it may be well doubted whether such double signification could stand under the law of trade-marks, so as to confer an exclusive right to the use of such a symbol. In case of such double meaning if the two purposes could coexist in one and the same trade-mark which is to control does the law allow to parties the privilege of thus blending public and private rights? It was conceded by counsel for complainant at the hearing (what was otherwise thoroughly established) that the letters "L L" on cotton sheetings did indicate four-yard or third-class goods, but it was said they had the further object and performed the additional purpose of designating their origin or ownership. Suppose the meaning thus assigned to said letters should be expressed in words, it would stand as follows: "'L L,' meaning thereby third-class cotton sheeting as known in the trade, weighing four yards to the pound, 36 inches wide, 52 yards to the bolt, 56 by 60 threads to the square inch, first quality of said grade, and manufactured by the Lawrence Manufacturing Company, of Lowell, Massachusetts." This would express fully the two distinct meanings claimed for the device. One would confer on the company the exclusive right to its use, while the other would be open to the public. Now, would the fact that one branch of such meaning referred to origin or ownership preclude the public from using the letters in their other meaning, as indicating or describing third-class sheeting? This would be a strange anomaly in
696 the law and would lead to inextricable confusion. Where origin and ownership is otherwise indicated, as by the use of the manufacturer's name, then the symbol, mark, or device which is intended to designate, grade, class, or quality cannot properly be also employed to denote origin or manufacture, and thus confer exclusive right to its use. In Caswell *vs.* Davis, 58 N. Y. Rep., 223, it is said that "words or phrases in common use and which indicate the character, kind, quality, and composition of an article of manufacture cannot be appropriated by the manufacturer exclusively to his own use as a trade-mark; and this is so, although the form of words or phrases adopted also indicate the origin and maker of the

article and were adopted by the manufacturer simply for that purpose. The combination of words must express only the latter, to authorize its protection as a trade-mark." A single symbol or mark cannot at the same time perform two such different offices, especially where origin or ownership is fully indicated or disclosed by other portions of the label or device. It being settled that a name, symbol, or mark which is indicative of grade or quality may be employed by any and all persons engaged in the manufacture of the same class or character of goods, it follows necessarily that a trade-mark cannot also serve that distinctive purpose. In Canal Company *vs.* Clark, 13 Wallace, 311, the Supreme Court say: "To entitle a name or mark to equitable protection as a trade-mark the right to its use must be exclusive, and not one which others may employ with as much truth as those who use it; and this is so, although the use by a second producer, in describing truthfully his product, of a name or a combination of words already in use by another may have the effect of causing the public to mistake as to the origin or ownership of the product. Purchasers, though mistaken, are not in such case deceived by false representations, and equity
697 will not enjoin against telling the truth;" but we need not dwell upon this question, as its correct solution is not essential to the proper determination of the present case, since, as already shown, the letters "L L" as used on complainant's first quality of cotton sheetings, in connection with the name "Lawrence Mills" and the device of the bull's head, indicate only grade, class, and quality, and not origin, ownership, or manufacture; and under this conclusion of fact the cases of Amoskeag Manufacturing Company *vs.* Trainor, 101 U. S. Rep., 51, and Amoskeag Manufacturing Company *vs.* Spear, 2d Sandf., ch. 599, are decisive of this suit. In its material facts and in the legal principles applicable to the same this case cannot be distinguished from that decided in the 101 U. S. Rep.

The other defences relied on and which will only be briefly noticed are also conclusive against the right of the complainant to the relief sought by its bill. When the complainant adopted the letters "L L" it is established beyond all controversy that said letters had been previously and were then employed by the Atlantic Mills or Company, of Lawrence, Massachusetts, to designate the same or like articles of sheeting. The brown sheeting which the Atlantic Mills produced at intervals between 1860 and 1872, and on which it stamped "L L" to indicate their grade, quality, and weight, ranged in weight from 4.19 to 4.56 yards to the pound. These goods were well known in the trade and portions of them were on the market in 1867. The goods being substantially of the same class and character as the sheeting on which complainant subsequently stamped "L L" as already shown, and it being well understood in the trade that said letters indicated grade and quality, the complainant could not, under the authorities, make an appropriation of them so
698 as to acquire the exclusive right to their use.

Priority of use by the Atlantic Mills of said letters, either as a trade-mark or as an indication of the character of the goods, would preclude the subsequent employment and adoption of them

by complainant as a symbol to designate the origin of its goods or as a valid trade-mark.

This is clearly settled by the authorities. After an interval or "interregnum" of non-production between 1865 and 1872, the Atlantic Mills resumed the stamping of its cotton sheeting with the "L L," and has continuously used said letters since that time on goods which are substantially the same as complainant's, differing slightly in weight, but competing with them by purchasers for consumption. Under such circumstances could complainant enjoin the Atlantic Company from using said letters on its cotton sheeting? It certainly could not without establishing beyond all controversy that the interruption or "interregnum" by the Atlantic Mills in the production of its "L L" sheeting operated as an abandonment of its right to use said letters. This is asserted by counsel for complainant; but the proposition is unsupported in fact and law. The evidence establishes no abandonment of said letters by the Atlantic Mills. What is required to show abandonment in such cases is clearly laid down by Brown on Trade-Marks, ss. 681, 682, 683: "A manufacturer or merchant may discontinue the stamping or branding of his products for many years before discontinuing the sale of the goods marked by him, and may destroy the dies, brands, or stencil plates; for he may have laid up a large stock of his wares or products or he may have launched them upon the ocean of commerce." "Mere lapse of time does not *per se* warrant the conclusion of abandonment."

But, suppose the Atlantic Company's private right, if it ever
699 had or claimed any, in the letters "L L" had been abandoned in 1867, said letters having already become well known in the trade and generally understood to designate the grade and quality of sheetings, how could complainant appropriate them to its exclusive use as a trade-mark? It is suggested that by complainant's long use of the letters and the superior quality of its goods the mark has ripened into an exclusive right, because many dealers now associate said letters with the products of the Lawrence Manufacturing Company. This is plausible, but not sound. Such after-acquired reputation or association, where the primary import or design of the symbol or mark is expressive of grade and quality, will not constitute a trade-mark or establish an exclusive right to the use of such mark. Thus, in Upton on Trade-Marks, 137, it is said, "That, although by long, continued use of certain words, letters, marks, or symbols which do not of themselves and were not designed to indicate the origin and ownership of the goods to which they are affixed, the goods so marked, and because so marked, have become known as those of the manufacturer who first used them, such fact cannot alter the original meaning of the words or symbols or the intent with which they were first used as denoting the name of the thing or its general or relative quality or take from others the right to employ them in the same sense." This principle is clearly sustained in Amoskeag Manufacturing Company *vs.* Spear, 2nd Sandf., ch. —; Canal Company *vs.* Clark, 13th Wallace, and Amoskeag Manufacturing Company *vs.* Trainor, 101 U. S. Rep.

Shortly after the Atlantic Mills resumed the use of "L L" upon

its cotton sheeting in 1872 other mills in various portions of the country commenced using said letters to indicate grade, quality, and class of their four-yard sheetings, and have continuously
700 since used the same for the same purpose, the name of the producer or some other symbol being used along with them to indicate the origin or ownership of the goods; but it is said that the product of the Atlantic Mills before 1867 was so fortuitous or intermittent and so insignificant as compared with complainant's since that date that the former's use of said letters should not preclude the complainant's right to the same. Except during the year 1860, it is not shown what was the extent of the Atlantic Company's production of "L L" sheeting; but the right to the use of said letters as a trade-mark does not depend upon, nor is it to be tested by the relative output of said mills or of the Lawrence Mills with those who have subsequently stamped said letters on their cotton sheetings. Our conclusion is that the Atlantic Company's use of said letters before their adoption by complainant precluded the latter from acquiring a valid trade-mark therein.

Again it is proved that complainant has not only branded sheetings of the same grade and value as its Lawrence "L L" with the private brand of certain jobbers containing the letters "L L," but has also since about 1867 put upon the market an inferior quality of cotton sheeting weighing four yards to the pound which it brands "Shawmut L L." If the presence of "L L" on the "Cumberland" cotton sheetings either actually deceives or is calculated to deceive the public or buyers of such goods by inducing the belief that the goods are those of the Lawrence Company's first quality, whereby that company is injured in its trade, what is to be said of precisely the same symbol, "L L," placed by the Lawrence Company upon its own sheeting of an inferior quality and less value? If goods so stamped convey a guaranty of uniformity and excellence, and by means of which complainant's first quality of third-class sheeting has met with
701 public favor, upon what ground can complainant justify the use of said letters upon an inferior and less valuable article that does not equally warrant their use by the defendant or exonerate it from the charge of deceiving the public? "An exclusive privilege for deceiving the public is assuredly not one that a court of equity can be required to aid or sanction. To do so would be to forfeit its name and character." Medicine Co. *vs.* Woods, 108 U. S., 218. An ingenious effort is made to relieve complainant from the effects of its own act in discrediting its alleged trade-mark, but when it claims that the meaning of "Shawmut" explains the matter it necessarily concedes that "Cumberland," the name adopted by the other mills, may do the same.

There is, of course, no infringement by the defendant if there is no valid trade-mark in the letters "L L." It was, however, urged in argument that, in the absence of a legal trade-mark to be protected, still the complainant was entitled to relief on the ground that its label or a distinctive part thereof was being simulated by defendant so as to impose its goods upon the public as those of com-

plainant; that defendant's use of said letters "L L" amounted to unfair competition in trade, and that the public was thereby imposed on and the complainant defrauded out of its just and reasonable profits. It is well settled that a party may, under certain circumstances, be restrained from using another's labels which do not rise to the rank of trade-marks. No one has the right to represent his goods as the goods manufactured by another. To do this by using another's label is actionable. But the facts of this case warrant no such finding against the defendant, who has been guilty of no fraudulent intent and has in no way either deceived the public or defrauded the complainant.

702 Upon the whole case the court is clearly of the opinion that complainant has no legal trade-mark in the letters "L L;" that it is not entitled to the relief sought by its bill, and that its said bill should be dismissed with costs. It is accordingly so ordered and decreed.

(Signed) HOWELL E. JACKSON,
Circuit Judge.

703 And thereupon the following decree was entered, Minute Book "S," p. 448, to wit:

Decree.

"Be it remembered that this cause came on to be heard this the 7th day of July, 1887, before the Hon. Howell E. Jackson, judge, etc., upon the bill, answer, proof taken by both sides, and the argument of counsel, and it appearing to the court that the complainant is not entitled to the exclusive use of the capital letters "L L" upon brown cotton sheetings as a trade-mark, and that there is no equity in the bill of complainant, it is accordingly so ordered, adjudged, and decreed by the court, and it is further ordered that the bill of complaint be dismissed, with costs to be taxed."

And thereupon, at the said April term, the following further proceedings were had, to wit, that complainant, by its solicitor, presented to the judges of the court the following petition:

Complainant's Petition for Appeal.

To the honorable the judges of the circuit court for the middle district of Tennessee:

Your petitioner, the Lawrence Manufacturing Company, complainant in the above-entitled cause, respectfully represents—

That, as appears in and by the order of this court, entered, to wit, July 9th, 1887, this complainant, on a former day of said term, to wit, July 7th, 1887, when the decree of this court was entered dismissing said bill for want of equity, as well as upon former days of said term, moved for the allowance of an appeal to the Supreme Court of the United States; that your petitioner, by counsel, in open court, upon said former days of said term, stated orally the grounds

of said motion for the allowance of such appeal, and that said order allowing said appeal gives to complainant sixty days from said 9th day of July, 1887, in which to perfect said appeal.

Your petitioner now, therefore, prays leave to state in this its petition the grounds of said motion, as hereinafter stated, and prays for leave to now file this petition and that the same shall be filed by the clerk, *nunc pro tunc*, as of the said 7th day of July, 1887, and be incorporated by the clerk in the transcript of the record to the Supreme Court of the United States.

For ground of said motion for the allowance of an appeal
704 your petitioner respectfully represents:

I. That other suits against other defendants who are using said trade-mark "L L" claimed by your petitioner, in which suits, as in this, said alleged trade-mark is sought to be sustained, are pending in circuit courts of the United States in Wisconsin, in Illinois, and in Indiana, and that all of said suits, including this one, have progressed substantially upon one record, the evidence in each being, by stipulation, made a part, so far as applicable or desired by either party, of the other, and that, under the rules of comity as applied, the opinion and decree of this court practically controls several other such suits.

II. That the main purpose of this suit was to establish the validity and legality of the exclusive right to the use, as a trade-mark, of said letters "L L" by this complainant, as in said bill of complaint, heretofore filed herein, which your petitioner prays may be taken as a part of this petition, is set forth; that the exclusive use of said letters, so sought to be confirmed to your petitioner, has been in the past and also would be in the future of the value to your petitioner, at least, of upwards of fifty thousand dollars; that during the first part of the existence of the defendant corporation, while it was making and selling cotton sheetings of said third general class, and during which period said defendant refrained from using on its brand for said goods said letters "L L," and during which period, as to this defendant, your petitioner enjoyed the unmolested use of said letters, such use thereof to this your petitioner was of the value of more than five thousand dollars, and the exclusive use of said letters as aforesaid as against this defendant, if judicially confirmed to your petitioner, would be hereafter to your petitioner of the value of more than ten thousand dollars;
705 and your petitioner is informed, advised, and believes that the damages due from this defendant on account of the continued use, complained of in said bill of complainant, heretofore of said letters, if said exclusive use be so confirmed to your petitioner, would, upon a proper accounting, be found by the court to be, exclusive of costs, a sum in excess of five thousand dollars.

III. Your petitioner further represents that the effect of this opinion and judgment of this court, both in law and in fact, is to cancel and annul said trade-mark so claimed by your petitioner as to all parties in the United States pending the obtaining of the opinion and mandate of the Supreme Court of the United States herein, and that the opinion and mandate of said Supreme Court in this pres-

ent case, upon such appeal as is now prayed, would have the effect either to confine said exclusive use of said letters to your petitioner or to annul and cancel said trade-mark so claimed by your petitioner, and that said alleged trade-mark and said exclusive use are of the value to your petitioner of upwards of fifty thousand dollars as aforesaid.

IV. For further ground of said motion your petitioner respectfully now again, and as before, excepts to the findings of the court as contrary both to the law and the evidence.

Wherefore your petitioner prays as it has heretofore prayed herein.

THE LAWRENCE MANUFACTURING COMPANY,
By JOHN I. VEEDER.

STATE OF ILLINOIS, } ss:
County of Cook, }

John I. Veeder, being first duly sworn, deposes and says that he is an agent of the said Lawrence Manufacturing Company; that he has read the foregoing petition; that he is familiar with the facts therein and in the said bill of complaint set forth; that the actual values and damages as to the said trade-mark so claimed by said petitioner are in excess of the amounts named in said peti-
706 tion, and that said petition is true, except so far as is therein stated on information and belief, and as to the same affiant believes it to be true.

JOHN I. VEEDER.

Subscribed and sworn to before me this 11th day of July, 1887.
[NOTARIAL SEAL.] P. H. MASON,
Notary Public in and for the County in the State Aforesaid.

And the following affidavit of notice to defendant was presented along with said petition, as follows:

Affidavit of Notice.

STATE OF TENNESSEE, } ss:
County of Davidson, }

J. A. Hasty, being first duly sworn, deposes and says that *being* manager at Nashville, in said county and district, for the Baltimore & Ohio Telegraph Company; that on Monday, July 18th, 1887, a message was received at his office reading as follows: "Chicago, July 18th, 1887. To Dickenson & Fraser, Nashville, Tennessee: Please take notice that on Friday, July 22nd, I shall present to Judge Jackson a motion for leave to file petition *nunc pro tunc* and appeal bond. (Signed) J. H. Raymond." And that a copy of said message was delivered and receipted for, to, and by J. M. Dickenson at 4.30 p. m. on said 18th of July.

J. A. HASTY, *Manager.*

Subscribed and sworn to before me this 22d July, 1887.
[NOTARIAL SEAL.] THEO. COOLY,
Notary Public in and for the County in the State Aforesaid.

And then came the defendant, by solicitors, and presented to the court and to the judge aforesaid the following motion:

Motion to Vacate Decree of Appeal.

"In this cause defendant comes, by solicitor, J. M. Dickenson, and moves that the former order in this cause granting complainant an appeal to the Supreme Court of the United States be set aside, because—

707 First. The pleadings and evidence do not show that the amount in controversy at the time of said decree sought to be appealed from exceeded, exclusive of costs, $5,000.

Second. The affidavit of Geo. M. Goodwin shows that at said time the said amount did not exceed three thousand dollars.

Defendant further moves that the petition presented by complainant for an appeal to the Supreme Court of the United States be disallowed and that complainant shall not be permitted to file the same:

First. Because it comes too late, the court having adjourned for this term.

Second. Because it nowhere avers that the amount in controversy at the time when the decree which its seeks to appeal from was rendered exceeded, exclusive of costs, $5,000.

Defendant further moves that said petition be disallowed because the affidavit of Geo. M. Goodwin shows that at the said time the said amount did not exceed five thousand dollars, and that the affiant to said petition, even if it be construed to make a sufficient averment as to said amount at said time, had not and could not have had any knowledge or information upon which to base said averment."

J. M. DICKENSON, *Solicitor.*

And in support of said motion defendant, by solicitor, presented the following affidavits:

Affidavits of Geo. M. & Arthur Goodwin.

"In this cause Geo. M. Goodwin makes oath that he is treasurer and general manager of the defendant, and has been such since 1874; that he is intimately acquainted with and has full knowledge of all the affairs, business details, and books of said defendant; that he has within the last three days, for the express purpose of ascertaining the facts embodied in this affidavit, carefully examined the books of defendant, which have been kept under his direct

708 supervision; that from said books he finds that the amount in controversy in this cause at the time of rendition of decree

in this cause, which complainant seeks to appeal from, did not exceed two thousand dollars.

Affiant further states that it was utterly impossible for John I. Veeder or any other person except the affiant or his book-keeper to have had any information or belief as to the amount in controversy in this cause at the time when said Veeder made the affidavit to complainant's petition for an appeal. The amount of "L L" goods made by defendant was an absolute indispensable element for forming such an estimate; neither the affiant nor any other person knew the amount of said production until within the last three days, when affiant went over the books with his book-keeper for that special purpose. The said Veeder never saw the books and knows nothing of their contents, and he does not know what defendant paid for the raw material out of which said goods were made.

Affiant is informed that said Veeder is a business associate of Messrs. Raymond & Rainey, complainant's solicitors, as the same appears from a circular filed herewith, marked "Exhibit A" and made a part of this affidavit; and affiant says that said Veeder is not a cotton manufacturer competent to speak with knowledge as to the matters deposed of by him, and that even if he were he was not and could not, even upon information, have been in possession of any facts upon which he could base any estimate of what the amount in controversy was at the time of the decree or of filing this bill or what it would be upon an accounting hereafter.

Affiant, in arriving at the maximum amount possible to establish as the sum of damages in the event of an adverse decree against the defendant, as above stated, as being not exceeding $2,000, is advised
709 that the profits of said defendant on said "L L" goods produced must form the basis and sum of the amount in controversy.

Affiant states that from April 7th, 1885, which was the earliest date any "L L" goods were stamped by the defendant, up to April 1st, 1886, the date of bringing this suit, the amount of net profits derived from the production and sale of "Cumberland L L" goods was $295.65; that from April 1st, 1886, to July 9th, 1887, the date of the decree, the amount of profits derived by the defendant from the production and sale of "Cumberland L L sheeting" amounts to $1,374, making a total net profit of $1,669.65 for all the goods of this class manufactured up to the date of the decree upon the most accurate estimate possible to make of the profits on said goods.

Affiant further says that during the period of time elapsing after April 7th and up to October 1st, 1885, the business of cotton-spinning suffered a very serious depression, and for that entire period of time the manufacture of these goods was attended by an absolute loss to the defendant. During this time the defendant company's mill ceased operations by reason of this depressed state of the market for cotton goods, and said depression was common to the business of cotton mills throughout all sections of this country, and affiant believes and is satisfied that the complainant suffered a like cessation of profits on their production during this period of time.

Affiant further says that he is familiar with the average cost of

producing cotton goods of this class, and is also familiar with the cost of cotton out of which the goods are produced, and from this knowledge affiant is satisfied and believes that said profit of $1,669.65, above stated, approximately represents the probable profits of any cotton manufacturing company or establishment throughout the country for the same quality and grade of goods, including the establishment of complainant for goods manufactured and
710 sold during same period of time, and it is not within the range of probability that the complainant or any other cotton manufacturing concern could have made a profit of $3,000 or above on a like quantity of goods of the same grade made and sold during the same period of time with the market for cotton and for cotton goods occupying the same relative position as to prices.

GEO. M. GOODWIN.

Affiant, Arthur Goodwin, makes oath that he is and has been book-keeper for the Tennessee Manufacturing Company for the past four years; that he has read over the foregoing affidavit of Geo. M. Goodwin and adopts as his own so much of it as refers to the profits made on "L L" goods by the Tennessee Manufacturing Company; he further states that he has never given John I. Veeder or any other person information upon which to base any estimate of said profits.

ARTHUR GOODWIN.

STATE OF TENNESSEE, *County of Davidson,* } *ss:*

Personally appeared before me, John M. Foster, a notary public duly and legally appointed, commissioned, and qualified, as required by law, in and for the county and State aforesaid, George M. Goodwin and Arthur Goodwin, with whom I am personally acquainted, and made oath to the foregoing instrument and signed the same in my presence this 16th day of July, 1887.

Witness my hand and official seal.

[SEAL OF NOTARY.] JOHN M. FOSTER,

Notary Public in and for Davidson County, State of Tennessee.

"Exhibit A" to the foregoing:

EXHIBIT A.

J. H. Raymond, W. G. Rainey, partners: John Irwin Veeder, P. H. T. Mason, associates.

LAW OFFICES OF RAYMOND & RAINEY,
CHICAGO, ILL., *April 18th*, 1887.

DEAR SIR: We shall move into more commodious offices in Temple court, Nos. 217 to 225 Dearborn street, this city, directly opposite the east entrance to the United States Government buildings.

711 We shall continue to confine our practice to the law of corporations, of copyrights, of trade-marks, and patents, as specialties.

Our library (including, in addition to text-books, reports, and legal periodicals, complete specifications and drawings of all U. S. patents granted since May 30th, 1871) is open to the use, in our offices, of all who receive this notice, and our library room is at the service especially of our professional brethren from other cities.

As heretofore, notices may be served without previous special appointment with him for taking depositions in our offices before Mr. P. H. T. Mason, notary public.

Respectfully, RAYMOND & RAINEY.

And thereupon the court was pleased to order the entry of the following decree, which is entered upon Minute Book S, page 451, U. S. circuit court, clerk's office, Nashville, Tennessee, to wit:

Decree.

"At the April Term, 1887.

"Present: Hon. Howell E. Jackson, judge, etc.

"And now comes the complainant, by its solicitor, and moves for leave to file a verified petition for the allowance of an appeal to the Supreme Court of the United States, *nunc pro tunc*, as of July 9th, 1887, the said petition being dated July 11th, 1887; and thereupon comes the defendant, by its solicitor, and moves to set aside the former order in this cause granting complainant an appeal to the Supreme Court of the United States; that the foregoing motion and verified petition by complainant be not allowed, and that the same be not filed, and defendant presents in support of its motion the affidavit of Geo. M. Goodwin and Arthur Goodwin.

"Thereupon it is ordered that the said motions, petition, and affidavits be all filed *nunc pro tunc* as of said July 9th, 1887, and shall be incorporated in the record of this cause to the Supreme
712 Court, this court declining to pass upon the question of the sum or value of the subject-matter of this cause, but leaving the same to be determined in the Supreme Court upon the record as thus made."

And thereupon said petition, sworn to by John I. Veeder, and affidavit of notice of J. H. Hasty, presented by complainant, and the motion of defendant aforesaid and its said affidavits of Geo. M. Goodwin and Arthur Goodwin were by the clerk of the said court then filed on the 23d day of July, 1887, as of July 9th, 1887.

And upon said July 9th, 1887, in the court and at the term aforesaid, the following decree was made in this cause:

Decree.

"The above cause coming on to be heard upon the 9th day of July, 1887, as well as upon former days of this term, before the Hon.

Howell E. Jackson, judge, etc., upon the motion of complainant for the allowance of an appeal to the Supreme Court of the United States, and it appearing to the court that a final decree dismissing the bill of complaint was entered at a former day of this term, to wit, on the 7th day of July, to which complainant at the time excepted, and from which it at the time prayed an appeal, the court is therefore pleased to order, adjudge, and decree, and doth so decree, that complainant's prayer for an appeal is allowed, and complainant is granted sixty days within which to perfect its appeal by the execution of a bond in the penal sum of five hundred dollars, with security to be approved by the clerk of this court."

And thereupon the complainant, by its solicitor, tendered the following bond and Government security in lieu of personal security thereon, to wit:

Bond.

"Know all men by these presents that we, The Lawrence Manufacturing Company, of Massachusetts, are held and firmly bound unto the Tennessee Manufacturing Company, of Nashville, Tennessee, and to its successors and assigns in the sum of five
713 hundred ($500) dollars, well and truly to be paid, and thereunto we bind ourselves and our successors by these presents.

In witness whereof the said Lawrence Manufacturing Company has caused these presents to be signed by its treasurer and its corporate seal to be hereto affixed this 20th day of July, 1887.

Whereas the above-named Lawrence Manufacturing Company has taken an appeal to the Supreme Court of the United States to reverse the certain decree entered in the above-entitled cause by the said circuit court for the middle district of Tennessee:

Now, therefore, the condition of this obligation is such that if the said Lawrence Manufacturing Company shall prosecute its said appeal to effect and shall answer all costs and damages if it shall fail therein, then this obligation shall be void; otherwise to remain in full force and effect.

THE LAWRENCE MANUFACTURING COMPANY,
By LUCIUS M. SARGENT, *Treasurer.*

Witness as to Lucius M. Sargent, treasurer—
CHAS. HALL ADAMS.

STATE OF MASSACHUSETTS, *The County of Surrey,* } *ss:*

On this the 20th day of July, A. D. 1887, L. M. Sargent, personally known to me to be the person who executed the foregoing instrument and being by me first duly sworn, deposes and says that he is the treasurer of the said Lawrence Manufacturing Company, and that he executed the said instrument, by the authority of the

board of directors of said company, duly entered upon its record, for the purpose therein mentioned.

CHAS. HALL ADAMS,
Notary Public in and for the County in the State Aforesaid.

"Approved:"
HOWELL E. JACKSON,
U. S. Circuit Judge.

Upon said bond appears the following entry, to wit:

714 "In lieu of personal surety a United States Government bond, No. 1798, dated September 1st, 1876, bearing coupons, the first due of which is due September first, 1887, is deposited herewith subject to the conditions of the above obligation."

THE LAWRENCE MANUFACTURING COMPANY,
By J. H. RAYMOND, *Attorney.*

And said bond was filed and U. S. security deposited, July 23d, 1887, in the office of the clerk of the court aforesaid, at Nashville, Tennessee; and thereupon the said clerk executed the following receipt:

Clerk's Receipt.

"Received of J. H. Raymond, for the Lawrence Manufacturing Company, a United States Government bond, No. 1798, dated September 1st, 1876, bearing coupons, the first due of which is due September 1st, 1887, bearing interest at the rate of 4½ per cent. per annum, and deposited, subject to the conditions of an appeal bond this day filed in my office by said Lawrence Manufacturing Company. This 23d day of July, 1887."

H. M. DOAK,
U. S. Circuit Court Clerk.

715 And the following citation was issued:

Citation.

The United States of America to the Tennessee Manufacturing Company, Nashville, Tennessee, Greeting:

You are hereby admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal granted by the United States circuit court, sitting in equity at Nashville, in and for the middle district of Tennessee, at the April term thereof, from a decree rendered at said term in a cause wherein the Lawrence Manufacturing Company is appellant and you are appellee, to show cause, if any there be, why a decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Howell E. Jackson, United States circuit

judge of the sixth circuit, this 27th day of July, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the 112th year.

(Signed) HOWELL E. JACKSON,
Circuit Judge.

Of which citation service was accepted by the defendant, the appellee, as follows, to wit:

"Service of the above citation accepted this 29th day of July, 1887."

(Signed) TENNESSEE MANUFACTURING COMPANY,
By DICKENSON & FRASER, *Solicitors.*

716 *Bill of Costs.*

Clerk's costs		$50 85
" " transcript, 2,489 fo.		248 90
		$299 75
Credit by $250 deposited with clerk		250
Balance clerk's costs		$49 75
Marshal's costs, none.		
Attorneys' costs (Dickenson & Frazer):		
To tax fee in circuit court	20	
To 104 depositions read in cause:		
59 by complainant-in-chief.		
3 " " rebuttal.		
42 read by defendant.		
104 in all @ $2.50	260	
		280 00
J. T. Spaulding, notary, Nashville:		
To dep. Geo. M. Goodwin	9	
To dep's Jos. Frankland, R. J. Lyles, J. B. O'Bryan, Wm. Porter, A. P. Connell, and Benjamin Herman	23	
		32 00
Attendance of six witnesses last named @ $1.50 per diem		9 00
Total costs unpaid		$370 75
Total costs		620 75

717 Office of United States Circuit Court Clerk, Nashville, Tennessee, in and for the Middle District of Tennessee.

I hereby certify that the foregoing is a true, perfect, and complete transcript of the record in case No. 2724, on the equity side of the

docket of the court and for the district aforesaid, the case of the Lawrence Manufacturing Company *vs.* The Tennessee Manufacturing Company, determined at the April term of said court, as the same is of record in my office.

In witness whereof I have set my hand and affixed the seal of said court this the first day of August, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the 112th year.

[Seal of Circuit Court U. S., Middle District Tenn.]

H. M. DOAK,
United States Circuit Court Clerk.

Endorsed on cover: No. 1039. M. Tennessee C. C. U. S. The Lawrence Manufacturing Company, appellant, *vs.* The Tennessee Manufacturing Company. Filed September 9, 1887.

FILED.
NOV 25 1890
JAMES. H. McKENNEY,
CLERK.

Supreme Court of the United States.

October Term, 1890.

No. 101.

THE LAWRENCE MANUFACTURING COMPANY, Appellant,

vs.

THE TENNESSEE MANUFACTURING COMPANY.

Brief and Argument for Appellant.

J. H. RAYMOND,
Solicitor and of Counsel for Appellant.

W. B. HORNBLOWER,
Of Counsel.

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United States Supreme Court.

October Term, 1890. No. 101.

LAWRENCE MANUFACTURING COMPANY,
APPELLANT,

vs.

TENNESSEE MANUFACTURING COMPANY.

APPELLANT'S BRIEF AND ARGUMENT.

MAY IT PLEASE THE COURT:

This is a bill in Equity, filed in 1887, by The Lawrence Manufacturing Company, of Massachusetts, against The Tennessee Manufacturing Company, of Tennessee.

(1) To enforce, as against the defendant, the exclusive right of the complainant to the use of "L L" as a trade-mark, or as a substantial and material part of complainant's trade-mark, on brown cotton of the third class;

(2) To enjoin the defendant from the use of "L L" on the ground that the adoption and use thereof by defendant at the date of the commencement of this suit had constituted unjust competition, and had resulted in unjustly, and by unwarranted means, diverting complainant's trade.

STATEMENT.

1. It is agreed in the pleadings that prior to any date involved in the record, and thence till now, brown cottons or sheetings, in the trade, are made, sold and recognized as belonging to four distinct classes, one of which includes heavy sheetings of such a weight that 2.85 yards thereof weigh a pound, another includes such sheetings as weigh 3 yards to the pound, a third, medium sheetings which weigh 4 yards to the pound, and a fourth, light sheetings which weigh 5 yards to the pound.

2. In 1860, 1862, 1864 and 1865, the Atlantic Mills made intermittent, occasional, and very limited uses of "L L" upon sheetings of respectively 4.19, 4.36 and 4.56 yards to the pound, and discontinued the use of this mark in 1865, but renewed it again in 1872 upon a distinct class of goods which weigh 5 yards to the pound, and have used this mark from thence till now on goods of the latter or fourth class.

3. Early in 1867, complainant's trade-mark was adopted for its goods of the third class, to wit, sheetings weighing 4 yards to the pound.

4. "A little time previous" (p. 46, q. 342) to the adoption of this trade-mark by complainant in 1867, it sold goods of this class under a mark involving a single letter "L," and for a little time sold a quantity of them. At that time, January or February, 1867, complainant abandoned the use of the single "L," changed the fold of its goods and adopted "L L," as its trade-mark.

5. Since April 25, 1867, and prior to the commencement of this suit, complainant made and sold under this trade-mark 214,119,594 yards of cotton cloth of this class, which equals an out-put of six hundred and fifty million feet,

or more than one hundred and twenty thousand miles, which would make a band reaching nearly five times around the earth, and has delivered these goods under that mark in every market of the world, establishing thereunder a most enviable reputation for the excellence and uniformity of its manufacture.

6. At the time of the adoption of this trade-mark by complainant, it also used, in its label upon these goods, a picture of a bull in a rampant position; but in 1883, some sixteen years after the adoption of "L L" as a trade-mark, this vignette was changed to a bull's head, the letters "L L" being still preserved both in the form in which the letters were printed, in their size and in their position in the label.

7. The excellence and uniformity of the goods manufactured by the complainant, for which it thus, and under this mark, established an extraordinary reputation, is shown by the following facts: During the first seven years the output was 121,654,608 yards, which weighed 30,533,921 pounds, averaging 3.9842 yards to the pound. In other words, in more than one hundred and twenty-one and one-half million yards the average of the yards to the pound was one and one-half hundredths (.0158) heavier than four yards to the pound, and by so much better than the trade-mark advertised the goods to be; or, to take the period selected by the defendant in an attempt to show a wrong advertisement by this trade-mark and a discrepancy in the weight of complainant's goods, to wit, the six months ending October 31, 1885 (Kilbourn, p. 19, q. 75), it appears that the product for that period was 13,751,136 yards, weighing 3,443,135 pounds, an average of 3.9937 yards per pound, or an average of sixty-three ten thousandths (.0063) of a yard heavier than four yards to the pound.

8. In this trade it was understood that complainant's 4-yard brown cottons should have in each square inch fifty-six threads running in one direction, and sixty threads running at right angles thereto; that the cloth should be thirty-six inches wide, and, since so folded in 1867 by complainant, should be put up in an 18-inch fold, and should have fifty-two yards in each piece, thus by the characteristics referred to (*all* of which are known to, and recognized by, those skilled in the art, and *some* of which are known to, and recognized by, all retailers and consumers), clearly distinguishing these goods from brown cottons of either of the other classes named.

9. In the manufacture of these goods threads will break, grease spots will accidentally get on to the cloth, mistakes will sometimes be made in the sorting of the raw material, the machinery will occasionally get out of order for a short time, and, on account of these and of other causes, goods are produced of this class which are inferior in quality, but which in weight, in texture, and in durability, are exactly the same as the four-yard goods to which we have referred. At the time of the adoption of the trade-mark here in suit the complainant adopted as a trade-mark for these "L L" goods of inferior quality, a label in which the word "Shawmut" was prominently printed so as thereby to distinguish goods of its manufacture, of this class, which were of inferior quality.

10. The result of the adoption and use by complainant of "L L" upon brown sheetings of this generally-recognized class, and, as complainant contends, *solely* as the result thereof, its goods have become known in all the marts of the world as being goods of its manufacture of the wonderful average and other excellences above referred to.

11. At the date of its adoption of "L L" as complainant's trade-mark, goods of this class made by other manufac-

turers were designated by other letters of the alphabet arbitrarily selected by them, as, for instance,—the 4-yard goods of the Agawam Mills were designated by the letter *F*, and the 4-yard goods of the Atlantic Mills were designated by the letter *P*. [At the same time the 5-yard goods of the Atlantic Mills were designated by "L L."] So great, so strong, and so enviable was the reputation built up by complainant for its 4-yard goods under this trade-mark, that they became generally known in the trade simply as "L L's"—orally expressed, double ell's.

12. In August, 1884, the complainant filled one order for J. V. Farwell & Co., of Chicago, for 150 bales of 4-yard goods. That firm then had a private stamp or mark, "Albany," which it sent to manufacturers to be used in stamping goods being made for said firm. Complainant so filled one order seventeen years after it had adopted its trade-mark, and commenced this immense output thereunder. The extent of the use of "L L" with such private brands as "Albany" was not developed in the evidence, for defendant's attorneys instructed their witnesses not to answer complainant's questions in this regard.

Vide Hobb's, Sup't Aurora Mills, p. 411.

Defenses—Questions Involved.

Referring to defendant's answer and to the assignment of errors in the opinion and decree of the Court below, hereinafter contained, we may, for the purposes of this hearing, summarize the subject-matters of the defenses made as follows:

(1) The prior use, 1860–65, by the Atlantic Mills, of "L L" upon goods of the fourth class (it is found by the Court below, without the slightest authority therefor in the record, that these goods were on the market in 1867).

(2) A deceptive purpose in the original adoption by complainant of its mark, growing out of its discontinuing the use of "L" and adopting "L L."

(3) The use by complainant of a label having "Shawmut L L."

(4) The filing, by complainant, of an order by a dealer in 1884, for "Albany L L's."

(5) The loss by complainant of its trade-mark rights by the extensive use of these letters by other manufacturers on goods of this class.

(6) That from the first until now these letters have indicated simply and solely grade, quality and class, and not origin and ownership, and therefore do not constitute such a symbol or design as is protected by the common law of trade-marks.

ASSIGNMENT OF ERRORS.

I.

The Court below erred in the following *findings of fact* contained in the opinion of the Court (R., pp. 465–479).

First. That the defendant had pleaded "that complainant was not the first to employ or appropriate these letters as a label or brand upon goods of *this general class*" (R., p. 467). There is no such pleading and no such proof.

Second. That the defendant had pleaded that "The Atlantic Mills, another cotton manufacturing company, had used said letters on *sheetings of the same grade or character* before complainant did" (R., p. 467). There is no such pleading and no such proof. The only allegation in the answer in point is that "before complainant used them, * * * the said capital letters 'L L' were stamped and used by the 'Atlantic Mills' in the United States of America on *a* grade of sheeting manufactured by them."

Third. That at the time of the adoption in 1885 by defendant of the letters "L L," they were generally known as indicating only a grade, class and quality.

Fourth. That, with inconsiderable exceptions of persons who have been more familar with them or have handled them exclusively, the goods of complainant were always known and invoiced as "Lawrence L L," and not simply as "L L's."

Fifth. That the use by the Atlantic Mills of "L L" from 1862 to 1865, was merely for the purpose of indicating quality. (R., p. 470). There is no pleading and no proof whatever even tending to such a conclusion.

Sixth. That said use by the Atlantic Mills of "L" and of "L L" did import merely (or primarily) quality or class; and in 1867, at the time of complainant's adoption, "L" and "L L" had become well known as designating simply quality or class!

Seventh. That it is fairly deducible from the evidence that the Atlantic "L L" cotton sheetings were in the market *in 1867*, at the time of the adoption by the complainant of this trade-mark.

Eighth. That said Atlantic goods are and were of the same general character and class as those upon which complainants stamped "L L."

Ninth. That the Atlantic "L L's" made and sold since 1872 are so near like complainant's goods in appearance, etc., that ordinary buyers and experts cannot and do not distinguish between them.

Tenth. That they compete with each other with retail dealers and purchasers for consumption.

Eleventh. That the *purpose* of complainant in adopting "L L" was to indicate class, quality or grade.

Twelfth. That the use by complainant which established the meaning of "L L" on complainant's goods, was a deceptive or deceitful one, "importing an admitted untruth," and that, therefore, no trade-mark rights could vest in complainant in "L L" which would be upheld in equity.

Thirteenth. That complainant's mark means and "indicates *only* grade, class and quality, and not origin, ownership or manufacture."

Fourteenth. That the use by complainant of "L L" with "Shawmut" on the inferior grade of third class sheetings discredits "L L" as a trade-mark.

Fifteenth. That defendant's label was not calculated to divert complainant's trade, or to deceive the public.

Sixteenth. That the defendant's use of these letters upon an inferior grade of sheeting of this general class, sold at lower prices, did not constitute an inequitable, and unjust competition and appropriation of complainant's trade, under complainant's then well-known distinctive mark, and therefore, that, under these general equities, independent of the private rights of complainant in "L L" as a trade-mark, defendant should not be enjoined.

We insist that each of the above sixteen findings of fact, specifically stated and running through the opinion of the Court below, are radically erroneous.

II.

The Court below erred in the following *findings of law:*

1. That to sustain a trade-mark an *affirmative pur-*

pose, at the time of adoption, to thereby *distinctively* indicate the origin and ownership, must be proven.

2. That if any other purpose was involved in the adoption of the device, the same cannot be upheld as a trade-mark.

3. That the complainant *must plead and prove* that it was the first to employ this mark "on the same or like articles of production" to entitle complainant to protection, and that the *onus probandi* is upon complainant to so show, and that this is not, wholly, a matter of defense.

4. That "where origin and ownership is otherwise indicated, as by the use of the manufacturer's name, then the symbol which is intended to designate grade, class or quality cannot properly be also employed to denote origin or manufacture, and thus confer exclusive rights to its use," even though the symbol be an arbitrary one, and, at the time of its adoption, a meaningless one.

5. That the mark must indicate "*only* the origin and maker," and "that the Atlantic Company's use of said letters before their adoption by complainant preclude the latter from acquiring a trade-mark therein."

III.

The Court erred in not finding that the complainant at the date of the commencement of this suit had the exclusive right to the use of "L L" as a substantial and material part of its trade-mark upon "brown cottons" or sheetings of the third general class, and in not issuing an injunction restraining any such use by the defendant, and in not ordering an accounting under the prayers of the bill of complaint.

ARGUMENT.

Did Complainant Establish a Trade-Mark in "LL"?

That these letters, under the proper circumstances, may form the proper subject-matter of a trade-mark can hardly be doubted. "H H" in the plow case, "A A A" in the whiskey case, and "B B H" for one class of iron, and "T H H" for another class of iron, are familiar illustrations of the use of the letters of the alphabet as trade-marks; and "L L" itself has been sustained as such in Kinnehan *v.* Bolton, 15 Ir. Ch. Rep., 75, decided by Lord Chancellor Brady. The Lord Chancellor says (p. 79):

"It is proved that these two letters designate this whiskey. The letters of themselves mean nothing. No one *a priori* would know the meaning of such a trade-mark. It is merely like a diamond, or an anchor or a crown stamped on any article, and the mark by which the vendor enables the public to recognize his wares. There can be no doubt, and indeed it was not disputed, that two letters may constitute a trade-mark."

The pleadings agree that the class of sheetings (commonly called "four-yard cottons") upon which appellant has used "L L" is a distinct and well-recognized class of goods. (See paragraphs 1 and 8 in "STATEMENT," *supra.*)

"As has been shown, general classes may be divided, and the name 'Iron Clad,' used on India rubber boots, is held not to preclude its use on leather boots; and 'Magnolia' may properly serve to indicate a certain manufacture of gin for one proprietor and a certain brand of whiskey for another."

Browne on Trade-Marks, sec. 68, and authorities cited.

At the date of the adoption of these letters by complainant they were not in use by anybody to designate any brown cottons or any similar article of manufacture;

and, in fact, had never been used by anybody to designate this distinct class of goods. So far as these or other analogous goods were then being made and sold, they were designated by other letters of the alphabet, arbitrarily selected; as for instance, "the Agawam F's" and "the Atlantic P's." It was found by the Court below, without a scintilla of evidence to support that finding, and without any evidence whatever directly directed to that question, that "Atlantic L L" five-yard sheetings were on the market in February, 1867, when this trade-mark was adopted by complainant; the fact being that that mark was used on other goods intermittently, and to a slight extent between 1860 and May, 1865, but not after, May, 1865, until 1872.

It remains, as will more fully hereinafter appear, that at the date of complainant's adoption in 1867 of "L L," these letters, as designating *anything* in connection with such goods, were neither public property nor the property of another.

It is not true that in this trade, the middle letters of the alphabet had been used to denote simply grade, quality, or class, or progression in grade, quality, or class, although the letters A, B, C, and the letters X, Y, Z, in this, as in other trades, have been used for that purpose. A great deal of testimony was taken to show that it was the habit in this trade to select some (the first and last) letters of the alphabet, to denote different grades of goods. That general proposition is abundantly and uselessly proved by the defendant. But it proves nothing in point. *Non constat*, letters of the alphabet not only may be, but, as shown by this record, have been arbitrarily adopted as trade-marks, such as the single letter "P" frequently referred to in the record as meaning four-yard goods of the make of the Atlantic Mills, and "H H H" as meaning goods of the Graniteville Mills (R., p. 279; q. 225, etc.)

Further, there is an uncontradicted and unchallenged matter of evidence in the record which sets at rest any general conclusion which might be predicted upon this general custom. We repeat that there was a rule or custom in this trade, as there was in other trades, and also in algebra, to select the *first* and *last* letters of the alphabet to denote grade, quality, and progression; but when middle letters of the alphabet were selected, until the trade shall have attached to them some significance (which, by the same token, establishes a trade-mark) they, the middle letters of the alphabet, are as meaningless as the most arbitrarily selected trade-mark that ever was used. Indeed, the Court below finds in express terms, that the letters L L "in and of themselves convey no meaning." (R., p. 474.)

"Q. Please state what the following words signify or import in the trade: Wamsuttas, Fruits, Pepperalls, Lonsdales and Augustas, and whether, in connection with those words, letters of the alphabet are used in the parlance of the trade, and you may state in what respect, if any, the use of these words respectively correspond to the use, in the trade, of the letters L L of which you have spoken?"

"A. These are the names used by certain large mills to designate their goods, and, although all, or nearly all, have letters used in connection with these names, the product of the principal style made by each of them is so large, and the goods have become so well known under these names that the letters referred to are rarely used, either in speaking of the different styles, or in ordering the goods by the trade. In this respect the product of these large mills is in marked contrast with the four-yard goods made by the Lawrence Manufacturing Company, these letters seeming to be a sort of pet name with the trade, *so that jobbers and commission houses alike are accustomed to calling these goods 'L L' instead of 'Lawrence' or 'Lawrence L L.'* In this market, certainly, any jobber receiving an order by mail for a bale of L L would

not be surprised, but would send the 'Lawrence L L goods.'" (See evidence of Nathan Hobart, a disinterested dry goods merchant of New York. R., p. 229, q. 2,243.)

We must necessarily conclude, from the immense output by complainant of these goods under this mark, that a valuable reputation was thereby acquired. Complainant's out-put under this mark grew from lesss than eight hundred thousand yards in 1867 to more than twenty-seven million yards in 1885, and so generally was the adoption and the reputation of these goods, made by complainant under its brand, that inquiry simply for "L L" sheeting came to be understood to mean sheetings made by the complainant.

If, as clearly stated in the opinion of this Court, delivered by Mr. Justice Lamar, at the last term, in Corbin against Gould, 133 U. S., 308, at the time of the adoption by complainant of "L L" in 1867, that symbol was the property of another, or was public property, then, notwithstanding the immense trade and the immense trade reputation built up by complainant under that symbol, still no legal trade-mark rights thereto could be acquired. But these letters had never been previously used in this trade or in any branch of this trade, except by the Atlantic Mills, and the middle letters of the alphabet had never been used in this trade so as to be generally accepted as meaning of themselves anything.

It follows that the public had no rights whatever in these letters; that to the public in 1867 they had no meaning; that they were not in any sense whatever public property; and the only remaining objection to the proposition that the complainant then, and immediately thereafter, established trade-mark rights therein, grows out of the only prior use of these letters in this trade, to wit:

The Use of "L L" by the Atlantic Mills.

The facts are—

Several witnesses in 1886 testify that they "think," and "guess," and "cannot say, but believe," that the Atlantic L L's have been in use, some say, fifteen, some say sixteen, some twenty-one, and others say twenty-five, forty-two, and one says forty-seven (!) years.

There is no single question in the record propounded to any witness as to whether *in 1867*, at the date of complainant's adoption, a single yard of Atlantic L L's was actually on sale. The last out-put thereof by the Atlantic Mills was in May, 1865. As to what was done by the Atlantic Mills in and prior to 1865, the testimony of Bowker, a witness for defendant (p. 257), who was the book-keeper of the Atlantic Mills, and of Lincoln, a witness for complainant (p. 232), and a member of the firm of Claflin & Co., which firm sold the out-put of the Atlantic Mills, establish the following facts:

In the early part of 1860, the Atlantic Mills stamped a few 4.19 cottons with L L, but stopped that use in May, 1860, and did not use these letters again until May, 1862 (Bowker, p. 257, q. 40). In 1862, another experiment was tried by the Atlantic Mills with goods weighing 4.36 yards to the pound (Bowker, p. 258, q. 5). The use of L L in 1862 must have been comparatively small, for it was in the very first part of the year, and these letters were not used by the Atlantic Mills from May 10, 1862, to May 14, 1864, notwithstanding the erroneous statement of fact by the Court below, that the Atlantic Mills put out goods of substantially the same class in 1863. (Bowker, p. 257, q. 17.) The Atlantic Mills commenced another use of L L in the summer of 1864, and continued it for one year, upon goods weighing 4.74 and 4.78 yards to the pound. (Bowker, p. 259, q. 18–20.)

It thus appears that in 1860, in 1862, in 1864, and in

the first months of 1865, the Atlantic Mills made an intermittent, fortuitous, and inconsiderable use of the letters L L upon sheetings of its manufacture belonging to the fourth well-recognized class of cotton sheetings, to wit, sheetings weighing substantially five yards to the pound, the actual weights as shown by the mill records of the goods so put out being 4.19 to 4.78 (p. 259, q. 20) yards to the pound.

It being admitted by the pleadings that these goods are made, sold, and recognized as of these distinct classes, and it being conclusively shown by the evidence that the only use of these letters, prior to their adoption by complainant, was such an intermittent and fortuitous use upon light sheetings, it cannot be fairly said either that the use of these letters to indicate a grade, a quality, or a class, was so well established as to make them public property, or that they had then become the private property of another, as to any class or kind of goods.

It cannot be fairly deduced from the record that the Atlantic Company acquired any trade-mark rights in the use of L L as indicating anything whatever prior to 1872. It cannot be fairly deduced from the record that the Atlantic Mills by its use in and prior to 1865 established any meaning in the trade for L L which became so common as to preclude the complainant from taking the same and creating trade-mark rights thereunder. There is here no proper question of a prior public signification of the symbol adopted, and no question of any prior or then existing private rights. The doctrine of abandonment of trade-marks, in any of the phases of that asserted doctrine, does not here arise, for the evidence shows that the Atlantic Mills had no rights to abandon. It did not make any considerable or continued use of this symbol until after 1872, and then resumed it in connection with cottons of "another distinct grade," as between which and the commercial article so stamped by complainant, there

is no likelihood of any competition or confusion. (*Vide* the sufficient evidence of Mr. Lincoln of the Atlantic Mills, p. 232.)

Without other citations to many parts of the record which might be made, it is sufficient, in order to show the fortuitous, intermittent and inconsequential character of the use of the mark now in question by the Atlantic Mills prior to its adoption by complainant, to cite the testimony of Mr. Charles S. Smith, who, from 1859 on, in New York, has been a large buyer in this class of goods, and especially of the out-put of the Atlantic Mills (p. 45, and p. 49, q. 497), who says that he never heard of said Atlantic L L goods.

"L L" as Indicating Only Grade or Class.

It is alleged by defendant, and was held by the Court below, that even if complainant, say between 1867 and 1872, had established common law trade-mark rights in L L, as indicating origin and ownership, such rights have been lost, for the reason that, as a matter of fact, in the trade, this symbol or signet has come to mean *only* grade, quality or class, and not origin, ownership or manufacture.

If this be true as a matter of fact, it is either by reason of the use by the Atlantic Mills of L L upon five-yard goods since 1872, or else by reason of the piracy of this and other defendants which has been, as alleged, so extensive and continuous as thereby to destroy any other meaning for these letters, than grade, quality or class.

As to the Atlantic Mills' use since 1872, we beg to add to what already has been said the following:

1. This use commenced seven years after the Atlantic Mills had ceased its intermittent and experimental use of L L, during five of which years complainant used this mark upon nineteen million yards (18,987,565) of cottons of the third class, or at the rate of three million seven

hundred thousand yards per year. But the average out-put of the Atlantic Mills, under this mark, even at the date of the commencement of this suit, was only forty to fifty thousand yards per week, as against an average out-put at that time, by complainant, of over five hundred and fifty thousand yards per week. (Q. 2,378–9).

2. The out-put of the Atlantic Mills, corresponding to the complainant's goods upon which L L was used, was marked "Atlantic P," and were known by the letter P.

3. The Atlantic goods now in question, to wit, their five-yard goods marked L L, were always known as "*Atlantic* L L's," and never as simply "L L's," as complainant's goods have been known. (P. 228, q. 2,331, and p. 230, qs. 2,346–7.)

4. The principal dry goods merchants of the country have testified that there is no possible competition, confusion, or, as some of the witnesses express it, "contact," between complainant's four-yard goods and the Atlantic five-yard goods, the expressions used being "not the least in the world"; "they are never confounded for each other;" and, to use the language of Mr. Lincoln, the agent of the Atlantic Mills, "there has not been, and there is no likelihood for any competition, because one is a four-yard sheeting, and the other is a five-yard sheeting—two distinct grades." The witnesses who testified to the above effect are E. Wilson, of Boston; C. S. Smith, of New York; Martin I. Cooley, of New York; Chumasero, Wingate & Dayton, of Kansas City; Williams, of Winona; Hill and Pinney, of Chicago, and others.

Some of the defendant's witnesses, who live under the eaves of the defendant's mills, testified categorically that there is some competition; but defendant's principal witness of this class, Mr. Benjamin Herman, of Nashville, says "there *is* competition; at the same time, *they do not come in conflict with each other* in our trade." (P. 375, q. 161.)

5. Again, it is to be noticed (*a*) that the labels of the Atlantic L L's and the complainant's L L's do not correspond in appearance, in that L L, in complainant's label, appears at the bottom thereof in a prominent and separate position, while in the Atlantic label, L L appears in the middle; and (*b*) that their packages are very different in appearance, complainant's goods being folded in an eighteen-inch fold, and the Atlantic goods, marked L L, being folded in a fifteen-inch fold, thereby prominently and distinctively, to the eye, distinguishing the Atlantic goods from the complainant's goods.

6. Again, it would seem sufficient that the representatives of the Atlantic Mills, and the representatives of the Lawrence Mills, both testified that there is, and has been, no antagonism, conflict, "contact," confusion or competition between these two lines of goods so marked.

7. They actually differ (1) as to class, (2) as to weight, (3) as to texture, (4) as to value, (5) to the feeling, (6) in the fold, (7) to the sight, (8) in the names by which they are known in the trade, (9) as to the amount of the out-put and the reputation enjoyed thereunder, (10) as to the date of their adoption (the Atlantic L L being five years after the other), and (11) in that they do not compete or occupy the same places in the trade.

How can it be said, in view of the record, as found by the Court below, that at the date of complainant's adoption in 1867, L L was well known and understood as indicating a grade, a quality, or a class?

How can it be said, in view of the record, that L L's of the Atlantic Mills manufacture, even of the fourth class, were on sale in 1867?

"At common law the exclusive right to it (a trade-mark) grows out of the use of it, and not its mere adoption."

United States *v.* Steffens, 100 U. S., 82.

"Undoubtedly words or devices may be adopted as trade-marks which are not original inventions of him who adopts them. Property in a trade-mark, or rather in the use of a trade-mark or name, has very little analogy to that which exists in copyrights or in patents for inventions."

Canal Co. *v.* Clark, 13 Wall., 322.

In Holt & Co. *v.* Menendez, So. Dist., New York, 1883, the Court says: "If, however, should the finding be made that a few years before it was adopted by Holt & Co. the name 'La Favorita' was used at St. Louis as a brand for flour, it must also be said that the use was fortuitous and continued for a short time only." Decree for complainant.

Vide 128 U. S., 514; quoted from *infra.*

In Symonds *v.* Greene, 28 Fed. Rep., 834, October, 1886, the plaintiff had used "Eureka" on a steam packing since 1875, and Sellers Brothers had used the word upon a steam packing from 1872 to 1874. The Court says: "When the orator first began to use it, it might have indicated that the goods were Sellers Brothers', and might not, but now it would not indicate, to any one in the trade, that the goods were Sellers Brothers', *nor would the fact of their former use of it now confuse its signification.* * * * Still, if the plaintiff adopted the name on account of value *which it had acquired* from its use by Sellers Brothers, he would not appear to have any just right to it now which a Court of Equity could protect."

We think the conclusion clear that the mark "L L" was open to adoption by complainant in 1867, and that thereunder a trade-mark was established.

Deceptive Purpose in Adoption.

The Court below found, on its own motion, that the adoption by complainant of L L was to distinguish goods of the third class made by complainant from other goods of the third class made by it, with the purpose of inducing the trade to believe that the new goods so put out by complainant were different from other goods of the same quality and class previously put out having the mark "L," and that therefore the complainant company was guilty of such a fraud in the beginning as to preclude it from subsequently acquiring any common-law trade-mark rights. The sole foundation for this finding is a single question and answer brought into prominence by the opinion of the Court below, and it is as follows (p. 46, q. 342):

"Q. 342. Please state, if you know, under what circumstances it adopted this trade-mark?

"A. *A little time previous** to our adopting the L L we sold them under a single L, and we were induced to change because it was a time when cotton goods were depreciating. We had made considerable sales of the single L, but a party who had bought a large lot was underselling us at a price lower than we could afford to meet, and I suggested that in order to keep them out of this competition the mills should change the fold of the single L from a narrow to a wide one, and to put on a double L."

Mr. Smith, who thus testifies, was the sales agent in New York for the complainant. He suggested that changing the fold of the package from a narrow to a wide one, and putting on a new mark, might establish a new trade.

Certainly the complainant corporation should not be held to have forfeited rights which it subsequently created by virtue of the fact that a part of the suggestion

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* The first sales by complainant of cotton stamped with the single letter L was in June, 1866, and the last sales were on March 21, 1867 (R., p. 235).

bringing about this new mark was, to put it strongly, a good trade venture. Indeed, the new fold of the goods, making a new package and a new commercial article, is of itself quite sufficient, independent of any other purpose of application, to sustain the new mark.

If, in the language of the Court below, and of the cases cited in its opinion, the mark *had ceased* to be true, and, during its use, *had become* an instrument of fraud, or if the inception, adoption, *and continued use* of the mark had been in the nature of a fraud upon the public, such, for instance, as representing the goods of one to be the manufacture of another, then the mark would not be protected as a trade-mark.

There is no case in the books the reasoning of which, applied to the facts of the case at bar, will support the conclusion that such a partial purpose, suggested by somebody, prior to the adoption, by a corporation, of a new and distinctive mark, will negative it as a trade-mark.

It is a part of the common knowledge, of which the Court will take judicial cognizance, that for more than a quarter of a century it has been the habit of dealers to buy goods of manufacturers, made and sold under a trade-mark or otherwise, and to sell the same for advertising purposes (advertised as "special sales") at a less price than the actual cost to the advertiser, that is, at a less price than the manufacturer sold the same for, and that in such cases the manufacturer must take some steps to protect his trade and to maintain the integrity of his price list.

Mr. CHARLES S. SMITH (p. 46) says "a party who had bought a large lot (of L goods) was underselling us at a price lower than we could afford to meet." Now, to meet that circumstance, for the manufacturer to change the package from a twelve-inch fold, in which all previous four-yard goods had been made up, to an eighteen-

inch fold, and to preserve in other respects its original label, and to adopt a new mark as the substantive element thereof, to wit, "L L," which mark was at that time neither public property nor the property of another, and to build up thereunder a great reputation for goods of this class, does not import fraud, deceit, nor "an admitted untruth," but is a perfectly justifiable means to an immediate end, the ultimate result being the subsequent development and establishment of the trade-mark now insisted upon.

The trade-mark L L, now insisted upon, was established, or became a trade-mark, at common law, about the years 1869 and '70 (p. 456, q. 3).

I am at a loss to know how a part of the purpose in the original adoption of a mark or symbol can be adjudged to annul a common-law trade-mark subsequently established, even *if* a part of the original purpose could be characterized as a fraud (as *is not true* in this case), when, under *a rightful and honest use* of the mark for a great many years, a valuable reputation was subsequently made.

Shawmut L L.

C. S. SMITH says (p. 50, q. 78) "Shawmut is a word of limitations when attached to L L. The trade understood it as the second brand of the goods made by the Lawrence Manufacturing Company," and (q. 379) "if a man asks us the price of L L's we should never think of giving him the Shawmut price, unless he asked it."

C. W. THOMAS, of Bradford, Thomas & Company, of Boston, says (p. 35, q. 226) that L L stamped on four-yard sheetings, although the same may be accompanied by the word "Shawmut," indicate that the sheetings were made by the Lawrence Manufacturing Company.

E. E. EAMES, of H. P. Claflin & Co. (p. 44, q. 320), says that the trade way of speaking of these goods is to call them "L L seconds."

ROBERT HILL, of Storm & Hill, Chicago (p. 168, q. 1,661), says that these goods have "*always* been supposed by the trade to be what is called the seconds of the Lawrence L L, or the mill run, lighter in weight, sometimes stained, perhaps, and not perfect in construction."

There is in the answer no allegation in this regard; and there is in the proofs no word of testimony tending to show that by the use, by complainant, of its trade-mark, "L L," in connection with the word Shawmut, which indicates "culls," the slightest deception has been practiced upon the public, or that this use has at all militated against or confused the real meaning in the trade of "L L."

If this use of L L by complainant has had any such effect, then defendant must be found to be guilty of the same fraud, deception, or confusion, by its use of L L upon goods of an inferior quality sold at a lower price; and upon the conclusion of fact, in this regard, contended for by defendant, it should be enjoined under the general equities pleaded in the sixth paragraph of complainant's bill.

But there is neither fact, logic, nor law for this defense.

In marking these goods, complainant must needs have done one of three things, to wit, either, *first*, not marked them at all, or, *second*, marked them with L L, adding something to indicate their inferior quality, or, *third*, used some entirely new and independent stamp. It was, of course, legal and proper to give them some mark; and to have put them on the market with an entirely new mark

would have advertised them as "First's" or "Regulars" of some class. To have used either no mark or an entirely new mark would have been dishonest, and would have subjected complainant to just criticism. The second, and only honest, course was pursued. The goods were, in fact, of the same general class as the regular L L's. They were made of the same material, by the same manufacturer, on the same looms, at the same time, and differed only from the regular L L's by accidents in the manufacture.

If complainant had marked these goods "L L–2ds," could fraud, deception, confusion, unclean hands, or any other thing militating against complainant's rights in L L as a trade-mark, be imputed? "Shawmut L L's" means, and always has meant, wherever these goods have been known (there is not in the record a particle of evidence to the contrary), exactly and precisely the same thing as "L L–2ds" would have meant if the latter had been used.

To charge complainant with any inequitable or deceptive conduct or intent in so marking and advertising imperfect "L L's" would be simply "punishment for honesty."

Albany L L's.

John V. Farwell & Co., large wholesale dry-goods merchants of Chicago, some years ago adopted the word "Albany" to be used upon various goods manufactured for them by various mills.

In August, 1884, seventeen years after L L had been adopted by the complainant, and thirteen or fourteen years after the same had, in fact, become a common-law trade-mark, and fourteen months before the commencement of this litigation, the Lawrence Company received from Farwell & Company a single order for 150 bales of complainant's L L's, and received from Farwell & Com-

pany a stamp ("Albany L L") to mark the goods with, which stamp was returned with the goods by the Lawrence Company to Farwell & Company.

The statement about this matter contained in the opinion of the Court below (p. 470) is quite inaccurate; and what conclusion the learned judge intended to be drawn therefrom does not appear, unless it be that thereby complainant in some way advertised that L L's were other than complainant's goods, and thereby committed some fraud or deception which, under the doctrine of Manhattan Medicine Co. *v.* Wood, 108 U. S., 218, and analogous cases, would deprive complainant of its trade-mark rights of seventeen years' standing.

The goods "were sold in the market as John V. Farwell & Co.'s Albany L L sheetings." (P. 470.)

The word "Albany" belonged to Farwell; he wanted to sell some of the Lawrence goods, and wanted to advertise them as coming from them through him. The transaction is determinative proof of the popularity and public reputation of complainant's trade-mark. There was no deception, for the goods were sold under Farwell's own name, and under his trade-mark "Albany." There were no such circumstances whatever as characterized the Medicine Company case, in which "a person affixed to goods of his own manufacture a trade-mark which declared that they were the goods of the manufacture of some other person."

The goods so made and sold were in all respects L L goods, made in the regular way by complainant, and having every characteristic of every piece of goods ever marked L L by complainant; and thereby complainant told no untruth even by implication, and cannot be charged therein with either deception, bad faith, or fraud; nor can it be said that there was ever such intention or

purpose on the part of complainant, or any such result or effect in the trade.

A general custom will be recognized by the Court as covering this transaction. Manufacturers generally (and especially in private or proprietary medicines) put on their own trade-mark or label, and then add "sold by ———," or else add the trade-marks of the houses whom they sell, which houses put the goods into the market.

George C. Richardson & Company for many years, subsequently George C. Richardson, Smith & Company, and subsequently Smith, Hogg & Gardner, as they say in this trade, "had the Lawrence account"; that is, these firms, in addition to selling many other lines of dry goods, had the exclusive sale of the output of the Lawrence Mills of brown cottons or sheetings. For the Lawrence Company to have made goods for them, and to have marked them with L L, and to have added the name or the trade-mark of these firms, would have been perfectly regular and perfectly consistent with the trade-mark rights of the Lawrence Company in L L, and, in fact, might have added to the dignity and legality of L L as complainant's trade-mark. Though the circumstance is seized upon by defendant, yet the conclusion is not altered, when the Lawrence Company, in a single order, found an output for its goods to be stamped with its trade-mark, through a large Chicago house, adding thereto both the name of that house and its trade-mark "Albany." On these goods L L, then for many years known as the symbol for complainant's goods, indicated that they were made by the Lawrence Company.

When one sends to a lithographer or printer a plate having a *fac simile* of his signature (Albany) to be printed upon the card, circular or policy of insurance, and in the use of which the lithographer or printer uses a design for which he owns a common-law trade-mark or a copy-

right, and if the lithographer or printer honestly and promptly returns the *fac simile* with the goods, is it to be inferred that thereby the lithographer or printer has granted any license or forfeited any rights under his trade-mark or copyright?

To make anything out of this circumstance beneficial to the defendant, one of two things must appear; either, *first*, that in this transaction the complainant perpetrated such a fraud or deception as thereby to annul its trade-mark rights; or, *second*, that a license was thereby granted to J. V. Farwell & Company, or through J. V. Farwell & Company to the public, under which the defendant may take.

Neither conclusion is either logical or equitable.

"L L" Still Indicates Origin and Ownership.

In the second place, we assert that, while the piracy of this defendant and others has been extensive and persistent, it has *not* been sufficient to convert the meaning of L L, as established in the trade by complainant, from a mark which means origin, manufacture and ownership, to a mark which means *simply* and *only* grade, quality or class. Herein we shall disregard the use of L L by the Atlantic Mills, both prior to 1865 and subsequent to 1872, as having been satisfactorily disposed of; and shall confine the question as it should be confined to the use or L L by the Tennessee, Janesville, Aurora, Evansville, Beaver Dam and other western and southern mills which are of comparative recent establishment.

It is a part of the common knowledge, that to freight cotton to New England, and to make it into cloth, and then to freight the cloth to the southwest, west, and northwest, costs more than to freight the cotton to the

southwest, west, and northwest, and there make it into cloth for local consumption, and that a natural advantage is thus enjoyed by the mills in the west, southwest, and northwest. But this affords no reason or excuse whatever, in the natural and proper division of this trade, for the appropriation, by the mills of the west, southwest, and northwest, of the trade-marks established by years of patient endeavor, and by thousands of dollars of expenditure, by the mills of the east.

We admit that, if the piracy of these southwestern and western mills had been, prior to the commencement of this suit in 1887, so generally extensive and continuous, as that, as a matter of fact, the reputation of complainant's trade-mark, as indicating origin, ownership, or manufacture, had been *entirely destroyed*, and by virtue of such infringement and piracy these letters had come to represent *solely, only, and everywhere* a grade, quality, or class (to wit, four-yard cottons), then this piracy and infringement, coupled with the sufferance and forbearance of the complainant, may have destroyed its common-law rights in the premises. But we most emphatically deny the fact; and

We also contend that if the original meaning of L L, as indicating origin and manufacture, remains to any considerable extent, either in the trade generally, or as to any considerable portion of the country, though that meaning may have been destroyed in certain localities immediately about the infringing mills, still sufficient remains, even under the most technical application of the law, to protect the complainant, and to restrain the piracy.

In order that there might be no mistake about this question of fact, and that the Court might be as fully informed in the premises as counsel could be, the testi-

mony of some seventy-five witnesses, wholesale dealers living in the busy marts, retail dealers living in the backwoods, jobbers and commission men, and traveling salesmen for wholesale houses, has been taken at representative points of the country, from Boston to the southwest of Missouri and the northwest of Minnesota. The careful attention of the Court is very respectfully invited to the extracts from the testimony of the witnesses upon this point, printed at the end of this brief, from which only a few selections are appropriate here. Thomas, of Boston, Page, Cooley, and Hobart, of New York, say L L "means four-yard goods *made by the Lawrence Manufacturing Company;* Doughten and Howett, of Philadelphia, say that when parties "order or speak of L L sheeting, it is the Lawrence L L they want;" and so says Meuschke and Lyons, of Sedalia, Missouri; Chumasero, of Kansas City; Byrne and Motter, of St. Joseph; Brown and Houghton, of Omaha; Eiseman, of Council Bluffs; Williams, of Winona; Boxrud, of Red Wing; Eyre and Gillette, of Hastings, Minn., and many others, whose testimony is abstracted, with special reference to this point, at the end of this brief. Even Wm. Gronewag, a wholesale grocery merchant, at Council Bluffs, who received, June 26, 1886, an order for groceries to go to Idaho, and therewith a request that he should buy and forward "two pieces of L L muslin," inquired of two dry goods merchants what that meant, and they both told him that it meant Lawrence sheeting. The attention of the Court is respectfully called, upon this point, to the evidence of fifteen witnesses, examined at Chicago, representing large wholesale dry goods houses, buyers for large miscellaneous retail houses, retail dry goods houses who do business of millions per year, and also retail dry goods dealers who do business in the poorer quarters of Chicago (as on Blue Island avenue and Milwaukee avenue, where the working people live), which testimony was so taken

as that the Court might have a mirror of the actual facts of this particular question in the trade.

In addition to this testimony, fairly brought from the high-ways and by-ways of the whole land, to show that complainant's mark, L L, has not, in a substantial or material sense, lost its original meaning, as established under the common law, to indicate goods of this class made by the Lawrence Manufacturing Company:

It is a significant and determinative fact that not only the Tennessee Manufacturing Company, the defendant in the test case presented to the Court, but each of the other manufacturing companes, whose piratical privileges are to be determined upon the record now presented, at the time of first putting out their four-yard goods, did not adopt the mark of the Atlantic Mills, or of the Pittsfield Mills, or of the Agawam Mills, or of any other mill on earth having a mark at that time indicating this class of goods, but did adopt the mark of the Lawrence Company, which indicated its manufacture of this class, under which mark it had then maintained for many years not only a valuable but an enviable trade reputation.

We most emphatically insist, that in 1867, when the complainant adopted L L, those letters in the trade absolutely had no meaning; and not only so, but also that at the time of the adoption of those letters by this and by the other defendants, said letters had substantially no meaning whatever, except as that meaning had been established by the Lawrence Manufacturing Company. And we think that a careful consideration of the evidence presented, will necessarily lead to the conclusions just stated.

"L L" Legally and Properly Indicates both Origin, Ownership and Manufacture, and Grade, Quality, and Class.

The contention of the complainant is, to use the language of the Court below, "that the letters 'L L' indi-

cate, not merely the grade, class, or quality of the sheeting, *but also* its origin, manufacture or ownership."

The Court below says that the question as to whether a mark may perform "at the same time the double office of a trade-mark and a description or classification of the article to which it is affixed, is a question not discussed in either of the Supreme Court decisions above referred to."

The Court below finds that the theory of appellant, that the letters L L signify or possess the dual meaning contended for, is not supported in point of fact by the evidence. With that conclusion we desire squarely and emphatically to take issue; but, supposing that the contention of appellant in this regard be correct, the Court below says: "In case of such double meaning, if the two purposes could coexist in one and the same trade-mark, which is to control? Does the law allow to parties the privilege of thus blending public and private rights?"

We contend that there are no private rights involved whatever, and that this mark indicates a class or kind of goods solely by virtue of the fact that this complainant's use gave it that signification, which result, in kind, has necessarily followed in the use of every valuable trade-mark that ever was adopted.

The Circuit Court continues: "Now, would the fact that one branch of such meaning referred to origin or ownership, preclude the public from using the letters in their own meaning, as indicating or describing third-class sheeting? This would be a strange anomaly in the law, and would lead to inextricable confusion."

So it would, if the public, at the date of the adoption of the mark, had had the right, or, by virtue of extensive and long continued infringement and piracy, had come into the right to use the mark to indicate grade, quality

or class; that is to say, if either at the date of the adoption of the mark, or at the date of the commencement of the suit, its use had so degenerated as that its *sole* and *generally accepted* meaning was a grade, quality or class.

This does not suppose or permit of a dual meaning; it supposes and permits of but one meaning, namely, grade, quality or class. The conclusion that the mark, at the date of its adoption, and at the date of the commencement of this suit, indicated, in any degree, origin, ownership or manufacture, absolutely negatives both the reasoning and the conclusion of the learned Circuit Judge, and of the other frequent misapplications, at Circuit, of the real doctrine laid down by this Court in the Trainer case.

It is well settled, to use the language of the case cited by the Circuit Court (Caswell *v.* Davis, 58 N. Y. Rep., 228), that "words or phrases *in common use* (at the date of the adoption), and which indicate the character, kind, quality and composition of an article of manufacture, cannot be appropriated by the manufacturer exclusively to his own use, as a trade-mark." The decision referred to contains a dictum, with which issue is now taken, as being a radically wrong proposition, contrary to common sense and to common experience, to wit, that "*the combination of words must express* ONLY *the latter*" (origin and maker) "*to authorize its protection as a trade-mark.*" This is the construction and application of the Trainer case, and the basis of the decision of the case at bar, with which we radically take issue.

We contend that (as found by the Court below) these letters *per se* are absolutely meaningless; that the long, undisturbed use by complainant and its immense out-put under this mark, gave it a meaning of *four-yard sheetings made by complainant*, and that that meaning, in all its breadth

and force, practically continued until the date of the commencement of this litigation. We admit that at the commencement of the suit this mark in the trade had this dual signification; but we contend that if it be held that by virtue of the fact that the trade recognized the mark as meaning not only the goods of the Lawrence Manufacturing Company, but also goods of the third class, the complainant lost its common-law rights in the mark as a trade-mark, then every owner of a valuable common-law trade-mark has lost all property right to it the minute it came to be generally and thoroughly understood.

The foundation of the doctrine as to origin and ownership is made up of two plain common-sense rules:

1. *Words or symbols may not be appropriated in their dictionary, or in their accepted trade meaning.*

An adjective being a word describing quality, may not be appropriated to any private use, for, if appropriated in its proper meaning, public rights are appropriated, and if used for any other purpose the public is deceived.

2. *A trade-mark is a guarantee of uniformity and excellence in manufacture, and must be so used, good faith being a part of the conditions of this amendment or addition to the rule.*

I buy a preparation of witch hazel, or "hamamelis," and use it with my child with good effect. Going into the market again and buying a bottle printed with that name I should get the same thing. If I desire a medium weight cotton sheeting—not a very heavy one (three yard) or a light one (five yard), but a four-yard sheeting—and buying "L L" I find that it makes up well, lasts and washes well, and if I go into the market again therefor the law, as a corollary to the primary rule, protects me in saying to the manufacturer that he must give me the

same grade, quality and class of goods; but the law does not say to him that because I recognize that mark as indicating the grade, quality, or class of goods, therefore he has no private rights in the brand.

It is solely and only with reference to the ideas of *uniformity* and *good faith*, and solely also as an amendment, addition, or corollary to the main proposition, that the terms "origin and ownership" are used as a limitation upon the plaintiff's right to a trade-mark.

These words are not used in the administration of the trade-mark law, with any special or particular reference to the person by whom, or to the place at which the goods are made. The public does not know where or by whom one in one hundred of the articles in daily use, which are protected by good and valid common-law trade-marks, and which are as familiar as the heading of a morning newspaper, are made.

Putting the two rules above stated together, *i. e.* (1) that terms in common use may not be used in their usual descriptive meaning, and (2) that a trade-mark must be used honestly, with uniformity and good faith in the manufacture, and adding (3) the fact of common experience that every trade-mark which has had any value has indicated a quality, a class, or a grade, we arrive at the proper conclusion that a mark which imports quality and grade *only*, and *not at all* origin, ownership, uniformity, or good faith, may not be protected; but, if the mark be arbitrarily adopted at a time when it has no dictionary or definite trade meaning, and comes, as a matter of just and extensive dealing, to represent a good grade, or a good quality, or a recognized class, and also to represent uniformity and good faith in the manufacture, it will be protected as against infringers attempting to reap the benefit of the reputation so established.

When in the books we find well-considered cases, denying the legality of trade-marks, because they do not

import origin and ownership, we also find from the facts of each case, that the mark, either at the date of its adoption, or at the date of the suit, imported, as a matter of fact *only*, grade, or quality, or classification. This Court has not said, that because a trade-mark imports a quality, or a classification, *ipso facto*, and without regard to what else it imports, it is not a legal trade-mark, although the Trainer case has been by some so under-understood, and by some so applied.

From the facts stated in the opinion in the Trainer case, these two propositions, and they only, can be said to have been established, to wit: First, that ordinary numerals to indicate size, progression, or quality, cannot be appropriated as trade-marks; nor can letters which are utilized for that purpose be so appropriated. The use of the letters of the alphabet progressively, as X, XX, and XXX (as used upon tin and other articles), has become public property, and cannot be appropriated by any one; and this Court found, as a question of fact pertaining to this one case, that the letters A C A were used for the above purpose, as distinguished from A C B, A C C, and A C D, "according to the grade or excellence of the goods."

The second and only other proposition established by this case is that where a sign, symbol, or mark indicates kind, quality, or excellence, *only, and exclusively*, they are not entitled to the protection of the trade-mark law.

Citations from the opinion of the Court, as follows, show that the above construction is the only one proper to be given:

"This is a suit in equity to restrain the defendants from using on ticking manufactured and sold by them the letters A. C. A. *in the sequence here named*, alleged by

complainant to be its trade-mark by which it designates ticking of a *particular quality.* * * * It appears that the complainant * * * marked its products with a label or ticket consisting of a certain device * * and in the center, the single letter A or B or C or D, *according to the grade of excellence of its goods.* * * * In the year 1834, or about that time, the company introduced an improvement in its manufacture by which it produced a grade or quality of ticking *superior to any which it had previously manufactured.* For goods of this quality it used in its label or ticket, in place of the single letter A, the three letters A C A * * * * The three letters mentioned were placed in the label or ticket on all goods of the very highest quality manufactured by complainant, *the single letter* BEING RETAINED *in the label placed on other goods to indicate a lower grade or quality.* It is contended by the complainant that the combination was adopted and used to indicate not merely the quality of the goods but also their origin as of the Amoskeag Company. It is upon the correctness of this position that it chiefly relies for a reversal of the decree dismissing the bill. On the part of the defendants the contention is that the letters were designed and are used to indicate the *quality* of the goods manufactured and *not their origin.* * * * It is clear from the history of the adoption of the letters A C A, as narrated by the complainant and the device within which they are used, that they were *only* designed to represent the *highest quality* of ticking which is manufactured by the complainant, *and not its origin.* * * * We are aware that there is in the record testimony of several witnesses to the effect that they understood that the letters were intended to indicate the origin as well as the quality of the goods to which they were attached, but it is entirely overborne by the patent fact that the label previously disclosed the name in full of the manufacturer and by the *history of the adoption of the letters as narrated by complainant.* * * * If an explanation be asked of their purpose in the label the only reasonable answer which can be given is the one which corresponds with the fact that they are designed MERELY *to indicate the quality of the goods.* * * * There is here no such imposition practiced upon the public and no such fraud perpetrated

upon the manufacturers in attempting to dispose of the goods of one as those of another as to call for the interposition of a court of equity."

Confirmance of the position that this case was decided solely upon the ground that the letters were "expressive *only* of the quality of the goods, and not of the origin or ownership, and that if the trade-mark sued upon did indicate origin and ownership, and also quality, it would be sustained," is found in the report of the case of Am. Button Co. *v.* Anthony, 15 R. I., 338, in which the Supreme Court of Rhode Island says:

"In Manufacturing Co. *v.* Trainer, 101 U. S., 51, strongly relied on by the defendants, the Court has based its decision upon the fact that the letters 'A C A' denoted *quality simply*, and not origin. Judge Clifford dissented from this conclusion of fact. If, as stated in that case, indication of origin is entirely overborne by the patent fact that the label discloses the name in full of the manufacturers, we do not see why any trade-mark, coupled with the name of the real manufacturers, might not be used; for, according to the language of the opinion, the indication of origin by the use of the trade-mark would be 'overborne' by the disclosure of the maker's name. We do not think the Court meant that the case should go to this extent. It simply found that the letters in that case did not indicate origin, and hence dismissed the bill.

"When the sign or symbol confessedly referred to quality and size of the goods (such as Style 830) and had no use in indicating origin until usage connected them in the popular mind with origin, this secondary use gives the property in the symbol, and an injunction will issue for its infringement."

In this case complainant was a manufacturer of buttons and nails with solid leather heads. In order to distinguish the different styles which it manufactured it assigned certain numerals arbitrarily chosen, for instance, 30, 40, 60, 70, 111, &c., to designate different styles and

heads, and it was held that these numbers arbitrarily chosen were properly adopted as trade-marks by the manufacturer to designate his style and his quality as well. The Court says: "A manufacturer may adopt such symbols, not simply to mark a style or quality, but *his* style and *his* quality as well. He is entitled to have *his* style and *his* quality protected from misrepresentation, and to have the benefit of any favorable reputation they may have gained."

See Shaw Stocking Co. *v.* Mack, Coxe, J., 12 Fed. Rep.

So also where the mark adopted *eo nomine*, expresses style (or class), if usage, continuing this meaning, connects the goods with their origin, the trade-mark will be sustained.

In Burden *v.* Stratton his Honor Judge Brown gave this subject an exhaustive consideration. Having examined a great many authorities, he says (12 Fed. Rep., p. 701):

"The only satisfactory rule we have been able to gather from the authorities is that in each case it is a matter for the Court to determine, not only from the mark itself, but from the testimony, whether the words have become so well known as to stand in the public eye as denoting the character and quality of the article *and not* its origin and ownership.

"*But if the primary use be to indicate the origin or ownership the mere fact that the article has obtained such a wide sale that the mark has also become indicative of quality is not of itself sufficient to debar the owner of protection or make it the common property of the trade. To hold otherwise would be to deprive the owner of the exclusive use of his trade-mark just at the time when it had become most valuable to him and he stood most in need of protection.*"

His Honor Judge Blodgett (14 Fed. Rep., 731–2) says:

"Trade-marks are the means by which the manufacturers of vendible merchandise designate or state to

the public *the quality* of such goods and the fact that they are the manufacturers of them; and one person may have several trade-marks designating different kinds of goods, or different qualities of the same kind."

As conclusive that the Circuit Court erred in its application of the law to the facts of the case at bar, appellant confidently relies upon the two following recent pronouncements by this Court.

In Manhattan, &c., Co. *v.* Wood, 108 U. S., 222, Mr. Justice Field, who delivered the opinion of the Court in the Trainer case, in defining what marks or devices will be protected as trade-marks, and what their characteristics should be, says:

"His trade-mark is *both* a sign of *the quality* of the article and an assurance to the public that it is the *genuine product* of his manufacture."

In Menendez *v.* Holt, 128 U. S., 514, which involved, among others, every question now involved, Mr. Chief Justice Fuller says (p. 520):

"They (complainants) used the words 'La Favorita' to designate flour selected by them, in the exercise of their best judgment, *as equal to a certain standard.* The brand did not indicate by whom the flour was manufactured, but it did indicate the origin of its selection and classification. It was equivalent to the signature of Holt & Co. to a certificate that the flour was the genuine article which had been determined by them to possess *a certain degree of excellence.* It *did not,* of course, *in itself indicate quality,* for it was merely a *fancy name* and in a foreign language, but it evidenced that the *skill, knowledge, and judgment* of Holt & Co. had been exercised in ascertaining that the particular flour so marked was possessed of a *merit rendered definite* by their examination and of a *uniformity rendered certain* by their selection. The case clearly does not fall within the rule announced in Manufacturing Co. *v.* Trainer 101 U. S., 51, 55, that 'letters or figures which, by the custom of trades or the declaration of the manufacturer of the goods to which they are at-

tached, are only used to denote quality, are incapable of exclusive appropriation, but are open to use by any one, like the adjectives of the language'; or in Raggett *v.* Findlatter, L. R., 17 Eq., 29, where an injunction to restrain the use of a trade label of the term 'nourishing stout' was refused, on the obvious ground that 'nourishing' was a mere English word denoting quality. And the fact that flour so marked acquired an extensive sale, because the public had discovered that it might be relied on as of a uniformly meritorious quality, demonstrates that the brand deserves protection rather than that it should be debarred therefrom on the ground, as argued, of being indicative of quality only."

Barton *v.* Stratton, 12 Fed. Rep., 696.
Godillot *v.* Harris, 81 N. Y., 263.
Ransome *v.* Graham, 51 L. J. (U. S.) Cl., 897.

[P. 521.] "Holt & Co., then, having acquired the exclusive right to the words, 'La Favorita," as applied to this particular vendible commodity, it is *no answer* to their action to say that there was no invasion of that right *because the name of S. O. Ryder accompanied the brand* upon flour sold by appellants, *instead of the name of Holt & Co.; that is an aggravation, and not a justification,* for it is openly trading in the name of another upon the reputation acquired by the device of the true proprietor."

Gillott *v.* Esterbrook, 47 Barb., 455; S. C., 48 N. Y., 374.
Coats *v.* Holbrook, 2 Sandf. Ch., 586.

[P. 521. As to prior use]: "Evidence was given to the effect that from 1857 to 1860 the words, 'La Favorita,' were occasionally used in St. Louis by Sears & Co., then manufacturing in that city, as designating a particular flour, but the witnesses were not able to testify that any had been on sale there under that brand (unless it were that of Holt & Co.) for upwards of twenty years. The *use thus proven* was *so casual* and such *little importance* apparently attached to it, that it is doubtful whether Sears & Co. could at any time have successfully claimed the words as a trade-mark, and, at all events, *such use was discontinued before Holt & Co. appropriated the words* to identify their own flour, and there was no attempt to resume it."

[P. 523. As to laches]: "Counsel, in conclusion, earnestly contends that whatever rights appellees may have had were lost by *laches;* and the desire is intimated that we should reconsider McLean *v.* Fleming, 96 U. S., 245, so far as it was therein stated that even though a complainant were guilty of such delay in seeking relief upon infringement as to preclude him from obtaining an account of gains and profits, yet, if he were otherwise so entitled, an injunction against future infringement might properly be awarded. We see no reason to modify this general proposition, and we do not find in the facts as disclosed by the record before us anything to justify us in treating this case as an exception."

The case above referred to of Gillott *v.* Esterbrook, 47 Barb., 455, is instructive. In this case it appeared that plaintiff was a manufacturer of steel pens in Birmingham, England, for twenty years, and afterwards had an agency in the city of New York and manufactured and sent to the United States steel pens of various descriptions, and among them, as early as 1839, a particular pen, upon which was impressed the number 303 and the words "Joseph Gillott, Extra Fine." It appeared that said pens so marked became well known to the trade and dealers as a valuable and popular pen; it was known and ordered by stationers and other dealers by its number 303 *to distinguish it from other pens made by the plaintiff* of other patterns and descriptions. The number 303 was impressed on the pen by the plaintiff before it had been so used by others and was so selected and impressed to distinguish such pattern or character of pen from other patterns made by him, and was so adopted and used by the plaintiff as his trademark for said pen in connection with his name and the words "Extra Fine." The figures 303 were arbitrarily selected by the plaintiff and of themselves expressed no quality or size of pen. Since about the year 1842 these pens were put up in boxes with a label bearing the plain-

tiff's name and the number 303. The defendants manufactured and sold a pen which in size, shape, color, pattern, flexibility and fineness of point so closely resembled the pen of the plaintiff as to require an expert or adept to distinguish them in these respects.

The defendants impressed upon their pen the figure 303 and the name of the defendants' firm, Esterbrook & Co., and the same words, "Extra Fine," as upon the pen of the plaintiff. They also put their pens up in boxes with a label upon which appeared the name "Esterbrook & Co," instead of "Joseph Gillott," together with the figure 303. It further appeared that after the trade mark had been adopted by the plaintiff, and had become established and well known in the trade, stationers and others in the city of New York *for fifteen years or more* had advertised and sold pens similar in appearance, as "303 Extra Fine pens," procuring the pens to be manufactured for them by English manufacturing houses in Birmingham, or by the defendants in this country.

The trial Court found that plaintiff was entitled to an injunction restraining the defendants from using the numerals 303.

The Court says, at Special Term, per Potter, J. (page 467):

"These symbols or figures do not, of themselves, indicate any appropriate name of this pen, nor any mode or process by which it is manufactured. They do not indicate the quality of the pen, but, connected as they are with the plaintiff's name, they indicate the origin and ownership of the pen, and were intended by him, with the addition of the words 'extra fine,' impressed thereon, also to designate the pattern of this pen as distinguished from other pens of his manufacture by those peculiar marks or devices. * * * * It is too remote a probability to suppose that the defendants, by any accidental choice of a trade-mark to distinguish their pen, just happened to select the figures 303 for that purpose; indeed,

this is not set up or claimed by them, any other set of numerals or any other device or symbols will represent the defendants' pen just as well as '303,' unless the design is to defraud the plaintiff. It is no hardship upon the defendants to have them stand upon the merits of their own pen, unaided by the reputation of the plaintiff as a manufacturer, or by the merits of his pen. If the defendents' pen is superior to the plaintiff's it will become popular upon its own merits; if it is inferior to the plaintiff's the public should not be misled or defrauded by the use of his trade-mark by others."

The Court further held, that the use of the defendants name instead of the plaintiff's did not deprive the imitation of the plaintiff's trade-mark of its fraudulent character. The Court says (page 469):

"The design to defraud may be as apparent and is generally more injurious in the partial than in the entire imitation. Where the trade-mark is a conspicuous device, connected with the name of the true proprietor, of course the imitator would desire to avoid the offence of forgery, and would omit on his own article the name of the true proprietor and substitute his own; but the real device might be copied with the imitator's name and other words of the original added, which may be also true as regards the imitator's article, and yet as effectually mislead the public as in any other way."

As to the defense of other use by other stationers, the Court says (page 470):

"The legal effect of this evidence is, first, that it is no defense that the fraud has been multiplied. Second, that acquiescence cannot be inferred, and it is revocable if it could be. The moral effect is a perverted and corrupted state of commercial integrity and honor in this respect which can not too soon be exposed and corrected."

The General Term concur in the opinion of Judge Potter as delivered at Special Term; and this decision

was affirmed by the Commission of Appeals. 48 N. Y., 374.

In Boardman *v.* Meriden Brittania Co., 35 Conn., 402, a manufacturer of brittania spoons, for the purpose of distinguishing them from all other brittania spoons in the market, and for the purpose of designating different classes of his own spoons, adopted labels with his own name thereon and some term descriptive of the goods and in connection therewith certain figures arbitrarily chosen, the different classes of spoons being indicated by fixed numbers. Under these labels and numbers the spoons acquired a reputation and they were generally bought and sold by the numbers on the labels. Held that the use of similar labels by another manufacturer, bearing the same numbers for similar kinds of spoons, was a violation of the trade-mark of the first manufacturer although the second manufacturer put his own name on the labels in place of that of the first.

In Lawrence Co. *v.* Lowell Mills, 129 Mass., 329, plaintiff's mark upon stockings consisted of an eagle and scroll and "523." Prior to the adoption of "523" plaintiff had used the eagle and scroll alone, and also with "321," and also with other numerals upon goods of different grades. Defendant's goods had a different colored print, were sold only at the West, and defendant's mark was like plaintiff's only in having "523." Defendant replied that "523" meant only a particular stocking nine inches in length, and of a cheap grade adapted to common use, such as had been sold by many in the market for years. On proof that the use of "523" by defendant was an appropriation of a substantial part of complainant's mark, and notwithstanding complainant had previously used this same mark with several other numerals, the use was enjoined.

Colt, J., says (p. 326):

"It has been said that there can be no exclusive right to use marks, figures, and letters which are intended merely to indicate the quality of the fabric manufactured, as distinguished from those marks which are intended to indicate its origin, because one has no right to appropriate a sign or symbol or mark which, from the nature of the fact it is used to signify, others may use with equal truth, and therefore have an equal right to employ for the same purpose. (Manufacturing Company *v.* Trainer, 101 U. S., 51.) And in Canal Company *v.* Clark, 13 Wall., 311, it was declared by Mr. Justice Strong that no one can claim protection for the exclusive use of a mark which could practically give him a monopoly in the sale of any goods otherwise than those of his own manufacture. (See also Gilman *v.* Hunnewell, 122 Mass., 139.) Letters and figures, when used only for the purpose of denoting quality, are, from the very nature of the use, incapable of exclusive appropriation. These considerations would be decisive if the plaintiff here claimed the exclusive right to the numerals '523' when used only to indicate the quality, and not with reference to the origin, of the goods. But such is not the plaintiff's position. Its claim is that the purpose of using these figures in connection with the other parts of its trade-marks was to aid the buyer in distinguishing its goods from similar goods made and sold by others. * * * This mark was recognized and known as the plaintiff's mark, and goods so marked were described and called for as '523's.'"

Ránsome *v.* Graham, 51 L. J., (N. S.) Ch. 897. Combinations of letters may constitute valid trade-marks, notwithstanding they indicate the quality and pattern of the goods to which they are applied, if, but not unless, they also indicate that the goods have been manufactured by a particular person or firm. Plaintiff had for many years made and sold large numbers of ploughs and wearing parts of ploughs, and in order to distinguish the various makes, patterns, and sizes, they stamped the different wearing parts with letters or combinations

of letters, the effect of which, as alleged, was that a purchaser of one of their ploughs requiring a new wearing part, could, by buying the same stamped with the same letters as his original plough, be certain of obtaining, first, an article of plaintiff's manufacture, and second, one which would accurately fit his plough. Plaintiff's registered seventeen of these combinations of letters as their trade-marks. In a suit to restrain infringment, it was held that plaintiff had a right to these combinations as trade-marks, notwithstanding they were also indicative of the pattern and quality of the goods to which they were applied. It was proved in this case that most of the infringers placed their own name as manufacturers together with the letters claimed by plaintiffs upon their goods (p. 902).

Godillot *v.* Harris, 81 N. Y., 263. It is not essential to property in a trade-mark that it should indicate any particular person as the maker of the article to which it is attached, it may represent to the purchaser, the quality of the things offered for sale, and in that case is of value to any person interested in putting the commodity, to which it is applied, upon the market, and he is entitled to protection in its use.

Shaw Stocking Company *v.* Mack, 12 Fed. Rep., 707, United States Circuit Court, N. D. N. Y., Coxe, J. Complainant manufactured hosiery which were packed in boxes, to which were attached labels bearing the words "Shawknit Seamless Half-Hose, Shaw Stocking Company, Lowell, Mass." The central compartment of the label was the same in every instance, without reference to the contents of the boxes. The figures at either end differed according to the style and size of the hosiery, the numerals "830" having long been used by complainant to designate seamless half-hose of a mottled

drab color manufactured by it. Half-hose of this particular variety had been advertised by these numerals, and were known to the trade as "830's," and, as such, had become popular as the wares of complainant. Defendants' labels bore the words "Seamless Half-Hose, Double Heels. Mack & Co., Albany, N. Y. Style 830."

Held, That the complainant had an exclusive right to the number "830" to designate and distinguish its hose of a particular variety.

Coxe, J., p. 711, says: "A careful examination of the authorities cited by the learned counsel for the defendants leads to the conclusion that where the Courts have refused protection to alleged trade-marks composed of letters or numerals, it has been because, on the facts of each case, it was determined that the figures or letters were intended *solely* to indicate quality, &c., and not because figures and letters in arbitrary combination are incapable of being used as trade-marks. It is very clear that no manufacturer could have the right exclusively to appropriate the figures 1, 2, 3 and 4, or the letters A, B, C and D to distinguish the first, second, third and fourth quality of his goods respectively. Why? Because the general signification and common use of these letters and figures are such that no man is permitted to assign a personal and private meaning to that which has, by long usage and universal acceptation, acquired a public and generic meaning. It is equally clear, however, that if for a long period of time he had used the same figures in combination, as '3214,' to distinguish his own goods from those of others, so that the public had come to know them by these numerals, he would be protected. The Courts of last resort in Connecticut, in Massachusetts, and in New York have distinctly held that doctrine."

Boardman *v.* Meriden, 35 Conn., 402.
Lawrence Co. *v.* Lowell Mills, 129 Mass., 325.
Gillott *v.* Esterbrook, 48 N. Y., 374.

We beg to supplement the foregoing brief discussion of the law with the following matter of fact, which is of im-

portance to appellant and important to be considered in the right determination of the case at bar.

It may be that the defendants, by their industrious piracy in different parts of the country, have so educated one or two hundred of the sharp, active buyers for the larger jobbing houses of the country, and so educated a few retail dealers in or about Aurora, Evansville, and Nashville as that they have "got onto" the advantage to them of encouraging the piracy and of purchasing from the defendants, and that they fully know all about the differences in quality and price between defendant's and plaintiff's goods, and in that sense only and to them, and to them only, L L may mean *simply* four-yard goods.

But it is not true, *and it cannot be deduced* from the record, that the defendants by their efforts have destroyed the guarantees of excellence, uniformity and good faith which L L on plaintiff's goods import in the territory and among the people where and by whom now 250,000,000 yards of plaintiff's goods have been consumed, or in and among any substantial or material part thereof.

If, by the acts of the defendants, either in amount or territory, in the number of dealers, or in the number of consumers, fifty or even seventy-five per cent. of the trade reputation of L L as established by the Lawrence Company has been destroyed and only fifty or even twenty-five per cent. is left, a wrong still remains to be righted by this Court, and the remedy is in damages and an injunction.

Fraud and Deception.

"Even where no fraud can be justly imputed, where the use of the name might as well originate in mistake and not in design, without knowledge of the complainant's ownership, the continuance of the use will be restrained, although the party may be exempted from damages and costs."

Amoskeag Mfg. Co. *v.* Spear, 2 Sandf., 599, 607.
McLean *v.* Fleming, 96 U. S., 245.

The sixth paragraph of the bill of complaint alleges "further and specially that the appropriation and wrongful use of the said letters 'L L' was for the purpose and with the tendency and effect of appropriating a part, at least, of the good will and trade reputation of your orator, and thus, and by means thereof in deception and fraud, to introduce at once into public favor the sheetings of the said defendant, to the damage of complainant."

The adoption of L L by the defendant, The Tennessee Company, was some 18 months or two years prior to the commencement of this litigation. (P. 368, q. 272.)

The defendant prior to its adoption of L L used:

Cumberland.

Sheeting.

4–4.

"Cumberland" to those in the immediate neighborbood might indicate a little river near defendant's mill, but to the trade meant nothing.

To the above, in the year 1884–5, was added "L L" at the bottom of the label, and in large letters (p. 388, q. 273).

The addition of "L L" was made at the request of the purchasers from the defendant company, so that, as we contend, they might sell defendant's goods as the goods of complainant. (R., p. 390, q. 290.)

It further appears, that even at the date of the commencement of this litigation, it was the habit of the retail dealers, who were aiding these infringing manufacturers in this piracy to conceal the goods of complainant under the counter, in an attempt to palm off the defendant's goods as the goods of the complainant, and thereby help to destroy the reputation of L L.

A fair sample of this appears in the testimony of Hill (qs. 1,620 *et seq.*), as follows:

"We have sometimes given Western and Southern L L so much preference that we have removed the Lawrence L L from our stands and counters, keeping them out of sight, and selling in preference the Western and Southern goods (q. 1,621). This has been done to the detriment of the sale of L L's made by the Lawrence Company."

See also, to the same effect, and as to the goods of the Evansville Company (p. 254, qs. 981, 982, and 991).

A leading case, frequently cited and followed as being "full of law and sound sense," perfectly applicable in all its facts, reasoning, and conclusion to the case at bar, is the case of Orr, Ewing & Co. *v.* Johnston & Co., 40 L. T. (N. S.), 307, in which the Court says:

"Having described the tickets, I repeat the question, should I be deceived so as to take the one ticket for the other, even if the two tickets were not before me, supposing me to be a purchaser of ordinary caution and ordinary intelligence? I answer, I should not, for this reason, that the two tickets certainly do not impress the eye throughout as being the same. There is a great similarity, undoubtedly; but more than that, I am bound to observe that in the one there is a name I can read, and in the other there is a name which I cannot read; therefore, there is a very strong difference between them. I can understand from whom the one emanated, but I cannot tell from whom the other came. I can read the place of manufacture upon both, and I can see they are different; and further than that, that the plaintiffs always used this green ticket with a trade-mark, which trade-mark the defendants have not imitated, and to which trade-mark they have challenged the attention of the reader by marking it as their trade-mark. That question, therefore, I should have to answer in the negative.

"But then arises the second question, Have the defend-

ants taken a material and substantial part of the plaintiff's ticket? For that purpose it seems to me immaterial to consider whether the ticket is justly entitled to be called a trade-mark strictly or not, for the reasons which appear in the course of what I am about to say. Before I can answer the question as to materiality of the parts taken I must have regard to two things. In the first place, I must look at the tickets and inquire whether a large part which impresses the eye has been taken, whether a significant characteristic of the ticket has been taken; and I answer that it has. I find that the two elephants in the top corners of the plaintiff's triangular ticket are repeated by two elephants in the two top corners of the defendant's ticket. It is quite true that the elephants are in a different position; one set of elephants have 'howdahs' upon them, and the others have not, and the trunks are turned in different directions; but still in each corner there is an elephant that impresses the eye with a considerable amount of similarity. Then I must next inquire the mode in which the plaintiff's goods have been accustomed to be sold, and what people have called those goods.

"Now, having arrived at the conclusion that the goods of the plaintiffs which bore the trade-mark in question were known as the 'Two Elephant' or 'Be Hathi' (L L goods) it follows, in my judgement, that two elephants (L L) were a material and substantial part of the plaintiff's ticket, because they were that part of the ticket which communicated this name to the goods. Lord Westbury, in the case to which my attention has been drawn (Edelsten *v.* Edelsten, *ubi supra*) observed upon the fact that the goods derived their trade name from that particular part of the ticket. I think, therefore that where the defendants did take these two elephants they took that which was a material and substantial part of the plaintiff's ticket. Now, what is the result of that? It appears to me that the result of that is this, *to throw upon the defendants the burden* of proving that their ticket did not deceive the purchaser, so that they should believe that the defendants' goods were the plaintiffs' goods. In the case of Ford *v.* Foster, James, L. J., makes this observation: 'The plaintiff makes this *prima facie* case, that he has a plain trade-mark, a material and substantial part of

which has been taken by the defendants. Then the *onus* is, under those circumstances, cast upon the defendants to relieve themselves from that *prima facie* liability.'"

We respectfully submit that "L L" was properly adopted by complainant in 1867, as then being "an arbitrary sign or symbol"; that thence until now, it has indicated to the trade of the world, a cloth of a particular and well-recognized class, made by the Lawrence Manufacturing Company; that it has not lost that meaning, or any considerable part of it, even by the desperate infringement by the western and southern mills; that the use thereof by the defendant, and by the others in whose place the defendant company stands, has been a willful and illegal appropriation of that reputation and trade signification, and that the same should be enjoined—*first*, for that it is an infringement upon complainant's property rights; and *second*, for that it is an unjust competition, which has appropriated a part of the good will and trade reputation of the complainant, amounting to a deception and a fraud, which should be enjoined.

Laches.

In every important case this defense is relied upon but very seldom prevails, and is not favored in trade-mark litigation.

The defendants contend that their piracy has been so extensive as to have destroyed complainant's trade-mark; and the question is, "have the defendants gotten to Canada"?

A very specious showing is made, at page 16 of appellees' brief, of a long list of marks involving L L, as having been in use for from two to fifteen years. We think the statement and showing there made is quite misleading.

1. The three references to the testimony of Wingate (p. 83) are radically wrong. He says that he has known

L L sheetings fifteen years; and that he has known *the defendants' L L's* four years. A fair sample of the other testimony cited is that of Erickson, a retail merchant out on Milwaukee avenue, in Chicago, who *can't exactly say*, but *thinks* that the badger State L L's have been in use about ten years.

The record in the companion case (No. 102 of this term, p. 69, Q. 118) shows that the Janesville company commenced using L L during 1875. This company was sued therefor in March, 1886. During the nine years that Superintendent Bailey was with that company, his estimate is they made the sum total of 30,000 bales for the nine years. (No. 102, Record, p. 70, q. 132.) At the time of the commencement of this litigation L L had been used by the Tennessee Company eighteen months, by the Aurora Company two years, by the Beaver Dam Company four or five years, and by the Janesville Company, say nine or ten years, but to what extent in either case the record does not inform us.

2. An exceedingly wrong conclusion is attempted from the use of L L on private brands. The following are cited by defendants among others, as if they were regular brands of goods sold generally in the trade, whereas, they are what are called private brands, and a very secret kind of private brands. I name six of them used by the defendant, the Evansville Company, for Mackey, Nisbet & Co., of Evansville, Ind., which firm sells the out-put of said company, to-wit: Adirondack L L, Indiana L L, Binghampton L L, Hyde Park L L, Minneapolis L L and Lancaster L L. In addition to the reference previously made to the arbitrary instruction of counsel for the defendant which prevented the complainant from ascertaining what private brands were used by the Aurora Company (P. 411), we call attention to the testimony of Morgan, a partner of Mackey, Nisbet & Co. (P.

308), who names but a part of the private brands of the Evansville Company, and declines to give the names of the parties for whom they so branded goods "because they prefer not to be known."

It remains that the six companies, of comparatively recent organization, located at New Orleans, La., Nashville, Tenn., Evansville, Ind., Aurora, Ill., Beaver Dam, Wis., and Janesville, Wis., have for a few years put out infringing goods in the southern and western territory.

There is here no question of abandonment by complainant. There is here no question of affirmative acquiescence by complainant in the defendant's use or in any use by anybody else. The sole question is, whether the extent and duration of the piracy by the defendants have destroyed the proper trade-mark signification of complainant's mark.

The testimony of Mr. Charles S. Smith should be determinative of this question. He has been a very large dry goods merchant in New York since 1865, and between that date and the date of this suit sold all of the complainant's L L's. Whatever conflict or competition defendants may have created would certainly be known to him. He never had heard (p. 50), at the time he gave his evidence, May 21, 1886, of the Tennessee Manufacturing Company, and he did not mention the Aurora Company, or the "Cumberland L L," until his attention was specially called thereto, although he is, in the first place, asked to mention the names of the competitive manufacturers of L L's, so far as he could recall them.

The question of damages has not yet properly arisen in this case, for it was not reached at Circuit. Conceding, however, *solely for the sake of the argument*, that complainant when the evidence shall have been taken before a master, shall be decreed, by undue delay in the commencement of this litigation, to have forfeited its rights to damages, still we insist that complainant is en-

titled to an injunction, and that the question of an injunction is the only question now here.

The rule in the case of McLean *v.* Fleming, 96 U. S., 245 reannounced in the Holt case, 128 U. S., 523, is determinative in favor of complainant on this point.

Appellate Jurisdiction of This Court.

Opposition was made at Circuit to the petition for an allowance of an appeal in the Tennessee case. No motion to dismiss in this Court has been made, but we are now informed that one of the counsel for the defendants proposes to suggest a question of appellate jurisdiction.

This case (No. 101) is a test case for the Tennessee Manufacturing Co., the Evansville Cotton Manufacturing Co., the Aurora Cotton Mills and the Janesville Cotton Mills, which several companies have been jointly represented in the taking of the testimony and in the argument of the case at Circuit. (See stipulation, caption and attendants in this case, pp. 10–12 *et seq.*, and stipulation in No. 102, pp. 22, 76, 77.)

The bill (pf. VIII, p. 4) prays for "great gains and profits to a large sum of money which had accrued to the said defendant from the use of your orator's exclusive right, the full amount of which is unknown to your orator, * * * and for profits and gains which your orator would have derived from this said exclusive right, but for the unlawful acts of said defendant."

Upon the decree at Circuit dismissing the bill being entered, the complainant filed a petition for the allowance of an appeal, supporting said petition by an affidavit, setting up as the grounds for the petition the following, to wit: That the decision at Circuit was contrary to the law and the evidence; that the decisions, at Circuit and of this Court, involved complainant's rights of recovery

against all these four defendants (Tennessee, Evansville, Aurora, and Janesville Companies); that the affirming of the decree below, by this Court, would absolutely destroy and annul that which complainant is contending for as its property rights, which are of the value of over $50,000; that, as to this particular defendant (the Tennessee Company), the value to complainant, during the first few months of the defendant's existence, when it refrained from the use of "L L," was *as against this defendant* more than $5,000; that the value to complainant of the exclusive use, *as against this particular defendant*, of "L L" would be more than $10,000; that the damages due from this defendant on account of the use complained of would be, upon a proper accounting, and exclusive of costs, a sum in excess of $5,000; and it was further and again averred, that the affirming of the decree of the Court below would cancel and annul a trade-mark of the value of $50,000.

The sole basis of the opposition at Circuit to this petition for an appeal was *ex parte* affidavits of two officers of the defendant company to the effect that upon *their estimate* of the *actual profits made by their company* in the sale of L L goods, when the cost of manufacture and sale (estimated by them and not given) was taken out, said profits, *so ascertained*, did not come to the sum or value of five thousand dollars.

This is by no means the measure of complainant's rights of recovery and constitutes such an insufficient answer to the petition for an appeal as that it should be utterly disregarded.

A discussion here of the proper rule to be adopted in ascertaining the complainant's measure of damages would be ill-timed and out of place.

We think that the practice as laid down by this Court (101 U. S. 232) has been strictly followed in this case, and that it is very apparent, on the face of the record, that the sum or value involved, at the date of the decree below, was far in excess of five thousand dollars.

Although the English Parliament has been indulging in statutory enactments concerning trade-marks since the year 1300, we are glad to say that in this country we are not dependent upon or hampered by legislative tinkerings to any extent in this department of the law; but that, in all of its purity, it remains a part of that common conscience called the Common Law, depending for its announcement and enforcement simply upon conscience and general custom.

We hope that the opinion of this Court will be such as that the appropriation in the dry goods trade of anybody's mark, even with "private marks," shall be put a stop to; and that complainant will be confirmed in what counsel considers to be its exclusive right to the use of "L L" on cottons or sheetings of the third class.

Respectfully submitted,

J. H. RAYMOND,
For Appellant.

W. B. HORNBLOWER,
Of Counsel.

EXTRACTS FROM TESTIMONY.

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EXTRACTS FROM THE TESTIMONY.*

THE TRADE MEANING OF "L L."

Retail Merchants and Purchasers from Them, as a Rule, do not know L L on Sheetings Means that they are Four Yards to the Pound.

As a matter of fact L L means in the trade, to *the jobber* and *some* of the retail merchants, four-yard goods. But the parties who consume these goods, and a great majority of retail merchants, do not know of this significance attached to L L, as appears from the following evidence for complainant:

At Sedalia.

H. H. MARCAN. (Q. 699) "I never knew that before." (That L L upon sheetings indicated that it is a brand known as four-yard sheetings). "I do not know" what grade rated by yards to the pound the Lawrence Mills used L L upon.

At Kansas City.

JAMES H. DAYTON, with wholesale house of W. B. Grimes & Co. (Q. 896) "I do not think three-fourths of our trade know what four-yard goods are, what it means." (Q. 897) Nor what five-yard goods mean. (Q. 824) His house trades in eleven States and Territories.

At Omaha.

RICHARD HODD, with the wholesale house of Tootle, Maul & Co. (Q. 1039) L L means four-yard goods to the man who is posted on brown cottons, whether jobber or retailer, although very few of our customers know anything about four-yard goods.

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* The questions of complainant's record are consecutively numbered.

J. J. BROWN, wholesale and retail. (Q. 1065) Some of the retail merchants know that L L, when used with reference to brown sheetings, has reference to its weight, "but I do not believe the majority do."

E. A. HOUGHTON, jobber. (Q. 1037) I do not think the retail merchant "has any knowledge only that derived by the brand on the sheetings; I mean some do not buy sheetings according to the weight." (Q. 1079). "But a small portion of the trade only understand that they are four-yard goods."

At Council Bluffs.

SIMON EISEMAN, wholesale and retail merchant. (Q. 1133) He knows nothing about the weight of such sheetings without comparing them. Nor does he think the consumer knows anything about the weight.

JOHN BENO, retail merchant. (Q. 182) L L to him has no meaning as having reference to the weight of such goods.

C. C. COOKE. (Q. 1167) So far as his knowledge went, "I suppose that the right bright merchants knew what it weighed, but there were lots that did not." (Q. 1069, etc.) In his opinion three out of every four retail merchants knows of such goods as simply L L sheetings.

At Winona.

E. WILLIAMS, jobber. (Q. 1217) Our house would understand that L L goods meant four-yard goods. But our trade know them only as L L.

At Red Wing.

CLIFFORD BELANGER, retail merchant. (Q. 1300) Neither he nor his trade know how many yards such goods weigh to the pound.

A. H. BOXRUD. (Q. 1319) "I do not know the exact weight, and I do not suppose the customers know of the Lawrence L L sheetings."

At Hastings.

GEO. H. GILLETT. (Q. 1446) "I never heard it called four-yard sheetings."

At St. Paul.

CHAS. O. KREIGER, jobbing house. (Q. 1552) "Most merchants, being inexperienced dry goods merchants in this section of the country, are not aware of its weight or count."

At Chicago.

C. H. JONES, retail merchant. (Q. 1819) "I don't understand what you mean by four-yard sheetings."

DUNCAN CAMPBELL, retail. (Q. 1867, etc.) "I could not say positively how many yards of Lawrence L L it takes to make a pound, and have no idea."

AD. LURIE, retail. (Q. 1984) "I never weighed yard muslin, and I always depend upon the wholesale man who sold me the goods."

C. A. TEAGUE, retail. (Q. 2043) Does not know the weight of Lawrence L L. (Q. 2046) L L is used on "good brown cotton; the count I cannot say; I do not remember the count or weight."

BURNET MANDL. (Q. 2199, etc.) Does not know whether Lawrence L L is a 2.85 or a five-yard sheeting; he goes by comparisons.

The Wholesale and Retail Dealers Throughout the Country know "L L" as meaning Origin and Manufacture.

Shown by testimony for complainant as follows:

At Boston.

EDWARD B. WILSON, of the firm of Moss, Wilson & Co., importers and jobbers of dry goods. In business 26 years. (Q. 163, etc.) Understands from his stock that L L means four-yard goods, and if one should ask him for a quotation of L L cotton I would quote him L L Lawrence cotton goods. He keeps no other "L L's."

CHARLES W. THOMAS, of the firm of Bradford, Thomas & Co., importers and jobbers of dry goods. In business 20 years. (Q. 194) L L "means to me four-yard goods, made by the Lawrence Manufacturing Company." (See Q's 226 and 227.)

At New York.

WALTER M. SMITH, dry goods commission merchant. In dry goods business thirty-four years. Is familiar with the different classes of sheeting manufactured and sold by the trade. (Q. 239) L L "represents four-yard sheeting manufactured by the Lawrence Manufacturing Company. In other words, Lawrence 'L L.'" (Q. 240) This is its general significance and meaning in the dry goods trade throughout the United States.

CHARLES S. SMITH, member of the firm of Smith, Hogg & Gardner, formerly of the firm of George C. Richardson & Co. These two firms have handled complainant's goods since 1865. (Q. 327, etc.) L L "signifies goods made by the Lawrence Manufacturing Company, and it has the same significance to the trade." (Q. 371, etc.) Orders are given for such goods, "send us so many bales

of L L." They are priced to the trade as "L L, so and so," nothing else is mentioned, and were always understood to mean the goods of the Lawrence Manufacturing Company. (Q. 530, etc.) Our customers would "come in and say, what is the price of 'L L'?"

HASTINGS E. PAGE sells for Tefft, Weller & Co., importers and jobbers. Been with the firm ten years. Firm handles L L and other four-yard sheetings. (Q. 554, etc.) "When any customers come in and inquire for L L, without stating anything but L L, the price would be given on the Lawrence L L, which I, and I think pretty much everybody engaged in jobbing domestics, consider *the* L L." "And the significance of L L means four-yard goods manufactured by the Lawrence Manufacturing Company." (X Q. 556, etc.) He knows of and mentioned many other four-yard goods stamped L L."

MARTIN I. COOLEY. Dry goods business for 25 years, and has distributed goods in almost every state in the Union. (Q. 2283) The trade understands L L to mean goods made by the Lawrence Manufacturing Co. (Q. 2286) They are spoken of as L L. (Q. 2309, etc.) L L, when stamped on brown cotton, "indicates to me and to the trade the trade-mark of the Lawrence Manufacturing Co."

NATHAN HOBART. Dry goods business for over 40 years; has done business with all sections of the country. (Q. 2321) L L means Lawrence goods.

At Philadelphia.

WILLIAM DOUGHTEN, wholesale dealer and jobber in dry goods for 36 years. (Q. 587) "We take it for granted when parties order or speak of L L sheeting that it is the Lawrence L L they want. We would not send any other L L unless specified." (X Q. 590, etc.) Have sold other makes of L L sheetings.

JEFFERSON M. HOWETT (p. 101), of the firm of Howett, Glass & Co., wholesale importers and jobbers. His testimony is to the same effect as that of Doughten.

At Sedalia, Mo.

HENRY W. MEUSCHKE, retail dry goods merchant for 11 years. (Q. 609, etc.) When the trade "come in and ask for L L sheeting I would suppose that it would mean Lawrence L L"; this has been its meaning ever since he has been in business. (Q. 613) Customers generally call for the L L sheeting. (X Q. 622, etc.) Has handled other L L sheetings.

J. W. LYONS, retail dry goods merchant since 1869. Has handled L L sheetings for 12 or 15 years. (Q. 642) To him and to his trade L L means muslin made by the Lawrence Manufacturing Co. (Q. 643, etc.) Has handled other L L sheetings.

H. H. MARCAN, retail dry goods merchant for 15 years. (X Q. 702) "L L sheeting is always connected with the words Lawrence Mills' sheeting in my mind." It may be because I have handled it more than any other. (X Q. 704) Has handled other L L sheetings.

At Kansas City.

GEORGE R. CHUMASERO, salesman for the wholesale dry goods house of W. B. Grimes. In dry goods business 12 years. Formerly with John V. Farwell & Co., of Chicago. (Q. 711) "In receiving an order for L L sheeting I would consider it meant Lawrence L L." (Q. 712) Have received such orders. (Q. 714) The meaning of L L to the trade generally is goods made by the Lawrence Manufacturing Company. (Q. 716) has handled several other L L sheetings. (Q. 728) Has received verbal orders for "L L," which he understood to mean Lawrence L L's. (Q. 784, etc.) The price of the four-yard L L sheeting is based on the price fixed by the Lawrence Mills.

JAMES H. DAYTON, with the firm of W. B. Grimes & Co., wholesale dry goods merchants. (Q. 822) With this and other wholesale houses at St. Joseph, Mo., 21 years. (Q. 823, etc.) Is familiar with the jobbing trade in Iowa, Nebraska, Kansas, New Mexico, Colorado, Indian Territory, and Missouri. (Q. 826) Has been familiar with the L L sheeting made by the plaintiff 16 years. (Q. 846, etc.) To him and to the trade L L means Lawrence L L. (Q. 849, etc.) Has known other L L's for several years. (Q. 863, etc.) Sometimes customers order such goods as "L L sheetings," and if the customer was a good merchant he would infer the customer wanted Lawrence L L.

At St. Joseph, Mo.

CHARLES B. SANDERS, with the wholesale dry goods house of R. L. McDonald for 12 years. Has handled Lawrence L L sheeting ever since he has been with this firm. (Q. 956) We receive orders for such goods "for so many L L."

T. C. BYRNE, salesman for Brittain, Richards & Co., wholesale dry goods merchants, traveling salesman for 6 years, and for six years salesman in the house. Has handled many L L sheetings, among them the Lawrence. (Q. 986) They only sell Lawrence L L. (Q. 988) "Some L L's we have got to sell, and others we have tried to sell unsuccessfully. (Q. 993, etc.) It is a fact that some orders for such goods" are received for so many pieces of L L sheeting, and such orders are filled with the Lawrence goods and no other."

JOSHUA MOTTER, 10 years with the wholesale house of Tootle, Hosea & Co. Is familiar with several brands of L L sheeting, among them the Lawrence. (Q. 1007, etc.) An order for L L sheeting, with no other description, I would understand it to mean and fill it with Lawrence L L.

At Omaha, Neb.

RICHARD HODD, 7 years with the wholesale house of Tootle, Maul & Co., 3 years with the house as traveling salesman, and 4 years in the house. During these 7 years has sold L L sheetings; has sold other L L's. (Q. 1021) He would understand an order for L L sheeting to mean either the Lawrence L L, or some similar grade of goods.

JAMES J. BROWN, a retired merchant. For the past 6 years a jobber in dry goods. Previous to that a wholesale and retail merchant. For 10 years or longer has handled L L sheetings. (Q. 1050) During this time should one have asked for L L sheeting, he would have understood him to mean Lawrence L L. (Q. 1051) The trade in general would understand it the same way. (Q. 1052) Has handled many other L L's.

E. A. HOUGHTON, member of the wholesale house of M. E. Smith & Co., formerly of Council Bluffs. With this firm 11 years, and during this time the firm has been selling L L sheetings. (Q. 1070) Has handled other L L's for 6 years besides the Lawrence. (Q. 1071) During these 11 years should a customer give an order or ask for L L sheeting he would understand it to mean the Lawrence L L. (Q. 1089) Has had a few orders for L L unaccompanied by Lawrence or any other name. (Q. 1096) L L means Lawrence goods. It was the only brand known to me for some years before the others appeared.

At Council Bluffs.

E. E. HARKNESS, member of three firms; retail dry goods merchant for 12 years. (Q. 1108) Up to two years ago would understand anyone asking for "L L" sheetings to mean "Lawrence L L."

SIMON EISEMAN, wholesale and retail dry goods merchant for 12 years. His firm has handled L L sheetings during this time. (Q. 1138) Customers have inquired for such sheetings as "L L sheetings," and he understood it to mean Lawrence L L. (Q. 1153) Should he receive an order for L L sheeting from a customer who had not purchased any L L from him, he would fill it with the Lawrence.

WILLIAM GRONEWAG, grocery merchant. Received an order for "two pieces of L L muslin," dated June 23, 1886, from a correspondent at Topouis, Idaho, and on inquiring of John Beno and of Charles Cooke, also dry goods merchants, they both told me they understood it to mean Lawrence sheeting.

JOHN BENO, retail dry goods merchant. Has handled Lawrence L L sheeting for 12 years, and during this time should a customer inquire of him for L L sheeting, he would understand him to mean and show him Lawrence L L. On June 28, 1886, William Gronewag asked him for L L sheeting and he understood him to mean Lawrence goods.

CHARLES C. COOKE, once a jobber, now a retail dry goods merchant. For the past 11 years has been familiar with L L sheeting, and to him and his trade, L L means Lawrence L L. (Q. 1158) If a man was well posted he would understand such an inquiry to mean Lawrence L L and the same if he was not well posted. (Q. 1162) His house has often received orders for L L muslin. Such orders meant Lawrence L L, and were filled therewith. (Q. 1171, etc.) On that day William Gronewag had an order for two pieces of L L muslin, and knowing me to have been in the business for several years, inquired what it meant, and I told him Lawrence L L. (Q. 1192, etc.) L L means goods made by the Lawrence Manufacturing Company.

At Winona, Minn.

E. WILLIAMS, retailer and jobber in dry goods for 17 years. During this time has handled brown sheetings stamped with L L. (Q. 1200) To him and to his trade, L L means goods manufactured by the Lawrence Manufacturing Co. (Q. 1202) Is familiar with the trade in Minnesota, Wisconsin, and Dakota. His house has sold several other L L's. (Q. 1220) Would never fill an order for "L L" with Atlantic L L. (Q. 1224) "I understand or have understood that L L sheeting means Lawrence L L, and it has been so understood by the trade."

ALFRED BROOKS. Been in the retail dry goods business for 15 years; for 11 years has sold brown sheeting stamped L L. (Q. 1248) Should a customer ask for L L sheeting he would understand it to be the Lawrence L L. (Q. 1249) And that is its general significance with the trade with which he is familiar. (Q. 1250) Has handled other L L's besides the Lawrence. (Q. 1275) Customers have asked him for muslin with two L's on it. (Q. 1277) Without looking at the brand.

At Red Wing, Minn.

ANTON H. BOXRUD, retail dry goods merchant for 14 years or more; has handled L L sheetings. (Q. 1315) Think sheetings are spoken of by jobbers or traveling men as L L, sometimes as Lawrence L L. (Q. 1316) When a jobber or traveling man spoke of L L sheeting, he understood it to mean Lawrence L L, as it was "the only sheeting we meant by that term." (Q. 1324, etc.) Has handled other L L sheetings. (Q. 1339) Yet should one inquire for L L sheeting he would understand it to be Lawrence, "as that is the best known and the oldest brand to my knowledge."

At Hastings, Minn.

D. E. EYRE, retail dry goods merchant for over 15 years. During this period of time has sold LL sheeting. (Q. 1348, etc.) To him and to the trade generally, L L means Lawrence goods. (Q. 1350) Has handled other L L's. (Q. 1395, etc.) Buyers that he has met in New York understand that L L means Lawrence goods. (Q. 1404) We hear it in any domestic department in New York. (Q. 1406) "I have always understood previous to this that L L meant Lawrence L L when nothing else was said." (Q. 1426) The buyers we met in New York were from all over the country.

GEORGE H. GILLETTE, in retail dry goods business about 10 years; during this time has been selling L L sheeting. (Q. 1431) When he hears L L mentioned he understands it to mean a muslin manufactured by the Lawrence Mills. It has the same meaning to the trade. (Q. 1451) This is his experience with the trade. (Q. 1454) I have always understood L L to mean Lawrence, unless some other prefix was mentioned. (Q. 1457) In buying muslin the seller would understand as I do what was meant by L L.

F. W. MEYER, retail merchant in business 9 years. During this time has been selling L L sheetings. (Q. 1469) Understands it to mean goods of the Lawrence make.

At St. Paul, Minn.

C. J. MCCONVILLE, with the wholesale house of Auerbach, Finch & Van Slyck, for 14 years purchaser and manager. Familiar with the trade throughout Minnesota, Wisconsin, Northern Iowa, Dakota, Montana and parts of Nebraska. During this time has handled L L sheetings. (Q. 1487) L L means a four-yard cotton cloth 56 by 60 threads to the square inch. (Q. 1490) Is

familiar with the Badger State, Beaver Dam, Graniteville, Hoosier and Aurora L L. (Q. 1493) Frequently received orders for such sheetings as L L sheetings. The Lawrence L L fixes the price of them all. (Q. 1516, etc.) Both these other L L's were introduced to the trade. L L meant sheetings made by the Lawrence Mills, and was so understood by the trade throughout the country. (Q. 1520) When he hears L L referred to he thinks of the Lawrence Mills. (Q. 1521) It is a fact that before these other L L's came into the market an order for L L sheeting meant Lawrence goods. (Q. 1523) To the extent that the other L L's were sold, they have taken away the trade of the Lawrence Mills in such goods.

CHARLES O. KREIGER, with the wholesale dry goods house of Lindekes, Warner & Schurmeir. The trade of this firm reaches into Montana, Dakota, Wisconsin and Iowa. Has sold L L sheeting. (Q. 1549, etc.) Before the other L L sheeting came into the market L L meant Lawrence goods. (Q. 1556) Sometimes now receives orders for such sheeting as "L L sheeting."

At Minneapolis, Minn.

J. P. SIMPSON (Q. 251), dry goods business for 24 years, with wholesale houses in St. Paul, Minneapolis and Chicago. For 12 years has been familiar with L L sheetings. That if an order came for "L L sheeting" he would understand it to mean Lawrence L L.

—— MUER, salesman in retail dry goods house of William Donaldson & Co. He understands L L to mean sheeting 36 inches wide made by the Lawrence Mills.

At Chicago, Ill.

ROBERT HILL, jobber of dry goods for 20 years at Milwaukee and Chicago, of the firm of Storm & Hill. Has

handled several L L's, all in competition with the Lawrence. His trade extends into Illinois, Iowa, Nebraska, Dakota, Minnesota, Wisconsin and western half of Michigan. (Q. 1601) In this trade L L means a sheeting weighing four yards to the pound, 56 by 60, as regards warp and filling, and based upon Lawrence L L, or Lawrence L itself. (Q. 1602) His house receives daily orders for such sheeting as "for so many pieces or bales of L L sheeting." (Q. 1603) And such orders are understood to mean, and filled with, Lawrence L L.

W. R. MacKendrick, buyer for cotton goods for Schlesinger & Mayer for over six years. Prior to that time with A. A. Stewart & Co., of this city, in their retail department. For ten years have been handling L L muslins. (Q. 1702, &c.) During this time, should one ask about L L muslin, he would think of a medium-weight four-quarter sheeting, and prominently in his mind Lawrence L L. (Q. 1709) Is familiar with other L L sheetings. (Q. 1703) Before he became familiar with the Badger State, Beaver Dam, and Aurora L L he would understand L L to mean Lawrence goods.

Charles G. Sladeck, clerk at Mandel Bros. large retail store. (Q. 1742) When customers ask for L L he understands it to mean Lawrence.

H. L. Pinney, salesman in the wholesale dry goods of Marshall Field & Co., the largest dry goods house in Chicago, and perhaps in the United States. With the firm twenty-one years. Is familiar with the sheeting stamped L L, and mentions Badger State, Beaver Dam, Hoosier State, Atlantic and Aurora L L. And knows of other brands, and all of which but the Atlantic comes in competition with the Lawrence L L. (Q. 1768) Should a customer order L L sheetings, and not designate any particular brand, he would suppose he wanted the Law-

rence. (Q. 1769, etc.) Up to the time the other L L's come into the market there would be no question in his mind but that such an order meant Lawrence L L.

C. H. Jones, salesman in the wholesale and retail house of A. S. Gage & Co. At one time in the retail department of Schlesinger & Mayer and Marshall Field & Co. (Q. 1794) Should one ask for L L muslin he would understand it meant Lawrence L L.

Duncan Campbell, salesman in the retail house of Charles Gossage & Co. for 5 years. (Q. 1845) For the past 18 months has been familiar with L L sheeting, and understands it to mean coarse brown sheeting manufactured by the Lawrence Manufacturing Company. (Q. 1851, etc.) This would be true, even though he had previously sold him Shawmut L L. (Q. 1854) "I call the Lawrence *the* L L sheetings."

Alfred Taylor, salesman in the retail department of Charles Gossage & Co. Customers sometimes inquire for L L sheetings and he understands it to mean the Lawrence Mills. (Q. 1904) Sometimes customers ask for these sheetings without the word Lawrence.

F. W. Roepstorff, dry goods clerk on Blue Island avenue. In business for 12 years. Buys for his house. (Q. 1918) During these 12 years, the first thing he would think of on hearing these L L's would be Lawrence L L's. (Q. 1916) That is its significance to him and his trade. (Q. 1917, etc.) When I asked my jobber for L L, and they are spoken of as L L, he asks me if I want the Lawrence.

Adolph Lurie, retail merchant on Blue Island avenue. 14 years in business in different parts of Chicago. (Q. 1934) During this time he understands that L L muslin

means Lawrence L L. (Q. 1953) When he wants the Lawrence goods he orders "so many pieces of L L muslin."

CHARLES A. TEAGUE, clerk in the retail house of Carson, Pirie & Co., Madison and Peoria streets. With them 7 years. (Q. 2017) During this time he would understand persons offering L L sheetings to be offering Lawrence L L. And if a customer asked for Lawrence L L sheetings he would show him Lawrence L L. (Q. 2018) With his trade L L means Lawrence L L. (Q. 2020) He has handled the Beaver Dam and Badger State sheetings. (Q. 2033, etc.) He would not suppose that a customer meant Badger State L L when he asked for L L muslin, because he would naturally expect him to ask for Badger State, and not L L.

R. W. YOUNG, retail dry goods business on Blue Island avenue. (Q. 2050) L L means to him and his trade the Lawrence L L. He sometimes orders goods as simply "so many pieces of L L." He orders such goods from John V. Farwell & Co.

J. W. SPENGLER, retail dry goods business on Milwaukee avenue. In business 12 years, buys for his house, purchases L L muslin from Marshall Field & Co. (Q. 2075) To him and his trade L L means Lawrence L L. (Q. 2080) Has handled the Badger State L L. (Q. 2136) If any one should ask for L L, I would give him Lawrence.

A. L. GLOCK, retail dry goods business on Blue Island avenue. Has handled the Lawrence, Aurora, and Badger State L L. (Q. 2148) Understands L L to mean the Lawrence L L. (Q. 2159) Understands L L to be the trade mark of the Lawrence Mills. (Q. 2187) Should one ask me for the L L sheeting I would hand him the Lawrence L L.

B. MANDL, retail dry goods merchant since 1860. Handled L L muslin 12 years. (Q. 2190) During this time should one mention L L he would understand him to mean Lawrence L L. (Q. 2191, etc.) This is the general understanding of the trade. Sometimes customers ask for L L, and he shows them Lawrence.

C. ERICKSON, owns two retail dry goods stores on Milwaukee avenue. For 15 years has handled L L muslins, Beaver Dam, Badger State, Shawmut, Pacolet, and Atlantic. (Q. 2267) If a party asked for L L muslin he would understand they wanted the Lawrence.

And the following extracts from defendant's testimony establish all that is contended for as to origin and manufacture, viz.:

New York.

HENRY A. COBURN. If he wanted to buy Lawrence goods he would order them by letter only. (X Q. 217) H H H means four-yard cotton goods, made by the Graniteville Mills. (X Q. 220) The letter P in the trade means four-yard goods, made by the Atlantic Mills. (Q. 221) In the trade where any manufacturer has a large line of trade under any particular letters of the alphabet, those letters indicate certain grades of goods made by those particular manufacturers. (These are strong admissions from a witness who evidently is prejudiced against the theory that letters can be trade-marks. See X Q. 166, etc.)

S. M. MILLIKEN, dry goods commission merchant and agent for the Pacolet L L and infringing goods. (X Q. 359) "If the letter P had been applied to no other sheeting except the Atlantic goods the trade would understand, in my opinion. If a person ordering P goods

they would send them Atlantic P, if the letter P had never been applied to any other grade of goods, or on other mills' name, and it has been used a long time." (Q. 350) To the same effect as above.

At Louisville.

JAMES G. CARTER. Before he handled other L L's besides the Lawrence, and had no knowledge of any other L L's, and if one should speak of L L sheeting I would think he had reference to the Lawrence.

LEVI BLUME. Same admission as that of Carter.

At Evansville, Ind.

E. B. MORGAN, Secretary and Treasurer of defendants, Evansville Manufacturing Co. (Q. 525) It is true that sheeting stamped with L L is known only to the trade as L L, and as such is distinguished from other grades of sheeting marked with the letters A, B, C, etc.

JOHN E. HUBBS, traveling salesman of the Evansville Manufacturing Company. (Q. 561) Has sold several L L's, among them the Lawrence, and should a customer ask him for L L he would understand it to mean a coarse brown sheeting weighing four yards to the pound, and branded by one of the brands he has mentioned. (Q. 665, etc.) He admitted he said it is not one time in fifty that customers specify any L L they want. The majority of his customers simply order L L sheetings.

ANDREW KECK. Has handled several L L sheetings. Has sold the Lawrence for over ten years. (Q. 836) At that time should one ask for L L sheetings, he would have understood him to want the Lawrence goods. (Q. 848, etc.) There is a distinguished class of sheetings known as L L.

At St. Louis.

JOHN BUCHANAN. (Q. 682, etc.) In substance that before he knew of any other L L sheeting but the Lawrence, and had he received an order for L L sheeting he would have filled it with the Lawrence goods. (Q. 702) "My strong impression is that the house received hundreds of them seven or eight years ago." (That is, orders for L L sheeting without specifying the brand.)

N. B. DAY. Has several L L sheetings giving their names. (Q. 733) They are frequently spoken of as L L sheetings.

At Indianapolis, Ind.

N. S. BYRAL. (Q. 960, etc.) His house has a four-yard goods stamped with L L, because the stamp of L L is generally known to the trade as four-yard goods, and no other letter will answer the purpose, as no other trade has been educated that way.

At Aurora, Ill.

R. HOBBS. (Q. 63, etc.) L L means a brown cotton sheeting four yards to the pound, and made by one of the mills he has mentioned, which includes the Lawrence. (Q. 105 to 109) He understands Shawmut L L to mean four-yard goods made by the Lawrence Manufacturing Company and called seconds, and that the word "Shawmut" is the word that indicates to him they are seconds.

WILCOX. (Q. 24, etc.) When he hears L L mentioned the Lawrence goods with others come to his mind.

J. S. HAWLEY. (Q. 16) In the trade, how is this grade or quality of sheeting manufactured by the Lawrence Company known? A. By the name of L L. (Q. 17.) How in the trade is this grade or quality of sheeting

manufactured by the Aurora Company known? A. The Aurora L L. (See X Q. 28, etc.)

I. S. SMITH, with John V. Farwell & Co. (Q. 43) Customers often ask for L L sheetings. (Q. 44 to 51) Such an inquiry he would understand to mean Lawrence goods, if the customer was from Kansas or Missouri; if he was from Nebraska or Iowa he would be in doubt whether Lawrence or some other, but if he was from Wisconsin he would suppose he wanted Badger State or Beaver Dam.

—— WILSON. (Q. 49 to 57) Should a customer ask for L L sheetings he would understand it to mean four-yard goods 36 inches wide, of the manufacture of the Lawrence, Badger State, Beaver Bam, Aurora, Shawmut, or Pacolet. (Q. 71) When there was only the Lawrence and Badger State in the market he would understand such an inquiry to have reference to the Badger State or Lawrence alone.

The Fraud and Deception of Defendant's Use, as Shown by the Following Evidence.

At New York.

CHARLES S. SMITH. (Q. 395) Thinks the branding of four-yard goods with L L in the manner that the defendants have done would have a tendency to deceive the trade. (Q. 467) "People, when they look upon this sort of thing, look for the L L, and they might be mistaken by the similarity to *the* L L." (Q. 514) "The old L L has been a very great target."

H. E. PAGE. (Q. 564) "It is not the way letters are made, but it is the letters themselves that make the trouble and mislead the customers." (Q. 581) The trade in general would be deceived by seeing the letters L L

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JOHN BUCHANAN. (Q. 682, etc.) In substance that before he knew of any other L L sheeting but the Lawrence, and had he received an order for L L sheeting he would have filled it with the Lawrence goods. (Q. 702) "My strong impression is that the house received hundreds of them seven or eight years ago." (That is, orders for L L sheeting without specifying the brand.)

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WILCOX. (Q. 24, etc.) When he hears L L mentioned the Lawrence goods with others come to his mind.

J. S. HAWLEY. (Q. 16) In the trade, how is this grade or quality of sheeting manufactured by the Lawrence Company known? A. By the name of L L. (Q. 17.) How in the trade is this grade or quality of sheeting

manufactured by the Aurora Company known? A. The Aurora L L. (See X Q. 28, etc.)

I. S. SMITH, with John V. Farwell & Co. (Q. 43) Customers often ask for L L sheetings. (Q. 44 to 51) Such an inquiry he would understand to mean Lawrence goods, if the customer was from Kansas or Missouri; if he was from Nebraska or Iowa he would be in doubt whether Lawrence or some other, but if he was from Wisconsin he would suppose he wanted Badger State or Beaver Dam.

—— WILSON. (Q. 49 to 57) Should a customer ask for L L sheetings he would understand it to mean four-yard goods 36 inches wide, of the manufacture of the Lawrence, Badger State, Beaver Bam, Aurora, Shawmut, or Pacolet. (Q. 71) When there was only the Lawrence and Badger State in the market he would understand such an inquiry to have reference to the Badger State or Lawrence alone.

The Fraud and Deception of Defendant's Use, as Shown by the Following Evidence.

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CHARLES S. SMITH. (Q. 395) Thinks the branding of four-yard goods with L L in the manner that the defendants have done would have a tendency to deceive the trade. (Q. 467) "People, when they look upon this sort of thing, look for the L L, and they might be mistaken by the similarity to *the* L L." (Q. 514) "The old L L has been a very great target."

H. E. PAGE. (Q. 564) "It is not the way letters are made, but it is the letters themselves that make the trouble and mislead the customers." (Q. 581) The trade in general would be deceived by seeing the letters L L

stamped on four-yard sheetings, similar to Exhibits 3, 4, 5 and 6, and led to believe that they were goods made by the Lawrence Manufacturing Company.

At Chicago, Ill.

ROBERT HILL. (Q. 1635) I believe that the trade in many cases have been deceived, and that the use of the L L on other sheetings has led retail dealers into the belief that they were buying Lawrence L L.

M. I. COOLEY. (Q. 2209) In his opinion the use of L L by the Pacolet Company on its goods would tend to deceive the trade or the public. (Q. 2293) Such use of L L is not in accordance with the best rules of commercial integrity.

NATHAN HOBART. (Q. 2341) He thinks the continued use by the defendants upon four-yard brown cotton of L L would tend to deceive a substantial portion of the trade or public.

H. L. PINNEY, with Marshall Field & Co. (Q. 1779) "I think it has made it easier to introduce them, from the fact they were branded L L." (Q. 1781) "I would think that it had reduced our sales of Lawrence goods by having these other goods. I know it has with my customers, for the reason that I don't sell any Lawrence L L if I can sell these."

At New York.

W. M. SMITH. (Q. 298) "My experience has been that they (jobbers) have pushed these goods (other L L's) to the injury of the sale of the Lawrence L L."

At Philadelphia.

DOUGHTON & HOWETT. (P. 100 and 101, Q. 601) "We think persons sometimes suppose that other L L's

are the same goods (as the Lawrence) with another brand upon them."

At Sedalia, Mo.

H. W. MEUSHKE. (Q. 631) "We can sell the average customers any muslin with L L on them at the same price, or for the same goods as the Lawrence L L." (Q. 632) "Fully half of our customers familiar with the Lawrence L L could be deceived by seeing L L on other goods of other manufacturers by supposing them to be the Lawrence goods."

J. W. LYONS. (Q. 646 to 652) When he has other L L sheetings in stock at the same time with the Lawrence, he has exposed for sale the other L L's, and secreted the Lawrence L L. But at such times, if a customer should ask for L L muslin, he would sell the Lancaster or Beaver Dam, in preference to *the* L L. (Q. 663) Thinks he has ordered L L sheetings and got other L L's; "but the jobber always sent explanation."

H. H. MARGAN. (Q. 669) Thinks he has received other L L's when ordering the Lawrence L L. "I have received them with the understanding, though, that if I did not like them I could send them back. I believe Beaver Dam and several other sheetings we have had since. It seems to me that they wrote us they were out of Lawrence L L." (Q. 670) I mean these L L sheetings were sent when I ordered Lawrence L L. (Q. 671) "It seems to me that Beaver Dam or some other, made down in Tennessee." (Q. 674 and 675) The L L's made in Tennessee, my impression is, comes from Samuel C. Davis & Co., St. Louis. (Q. 677 to 683) It is my opinion that an ordinary customer would more than likely take these L L sheetings for the Lawrence. [See also X Q. 684, etc., 691, etc., 697, etc.] (Q. 704) Thinks other L L's were bought to take the place of Lawrence L L.

At Kansas City.

GEORGE R. CHUMASERO. (Q. 728 to 730) Has received orders for L L sheetings; understood it to mean Lawrence, when they had Lawrence, and when out of L L, supplied other L L's in place.

E. B. WINGATE. (Q. 770) His house has L L sheeting stamped Kaw River, made by Mackay, Nesbit & Co (Evansville Cotton Manufacturing Co.) (Q. 775) These and other L L's he mentioned made by the same parties come in direct competition with the Lawrence. (Q. 777) Also handles Aurora L L's. (Q. 783, &c.) Sold on a guarantee as to future price, and he thinks the price of Lawrence L L fixes the market price. (Q. 786 to 796) These other L L's are sold at the same price with the Lawrence, less freight; that is to say, they buy the Lawrence at Lowell, Mass., and pay the freight, but other L L's are sold to come at the same price as the Lawrence, but delivered freight free.

JAMES H. DAYTON. (Q. 850, 866, &c.) My idea is if they (the merchants) ordered a L L they would put in most anything, except the Lawrence. (Q. 868 to 870) He knows that other L L's have been sent instead of the Lawrence, and returned "because they were not ordered." (Q. 871) I know that other L L's have been substituted when they could put in a great many goods. (Q. 872) He thinks the house he has mentioned have kept the Lawrence L L's out of sight for the purpose of putting on the trade other L L's they had in stock.

St. Joseph, Mo.

C. B. SANDERS. Thinks the firm has sold Crescent City, Badger State, and Beaver Dam L L. (Q. 944, 951) Has tried to establish the Badger State and other L L's exclusive of Lawrence. (Q. 956) He receives orders for such

goods "simply as so many pieces of L L." (Q. 957, &c.) And are filled mostly with Badger State L L, or any other L L we have the greatest quantity of at the time.

JOSHUA MOTTER. (Q. 1002) His house has handled the Aurora and Hyde Park L L. (Q. 1005) Hyde Park L L is made by Mackey and Nisbet, and is their private brand.

At Omaha, Neb.

JAS. J. BROWN. (Q. 1052) Has handled Badger State, Pensacola, and Beaver Dam, in addition to the Lawrence. When receiving an order for L L, and out of Lawrence L L, I have substituted Badger State and Beaver Dam.

E. A. HOUGHTON. (Q. 1070) His house has handled the Baltic, Badger State, Hoosier and Lancaster L L, besides the Lawrence. (Q. 1073) Have made special effort to sell these other L L's in preference or in lieu of the Lawrence. (Q. 1076) When they are out of Lawrence L L, have filled orders for L L, or Lawrence L L sheetings, with any other of the L L's mentioned.

At Council Bluffs.

SIMON EISEMAN. (Q. 1123, etc.) The salesmen might make an ordinary customer believe, by L L being on the sheeting of the same class as the Lawrence L L, that they were Lawrence L L goods.

At Winona.

E. WILLIAMS. (Q. 1203) His house has sold Badger State, Beaver Dam, King Hill and Island Park L L, the last two being private brands; also higher and made by Aurora Manufacturing Co. (Q. 1204) And since his house has got these L L's they have not sold the Lawrence. (Q. 1208) Has had a difficulty to persuade the merchants to handle these L L's instead of the Lawrence.

ALF. BROOKS. (Q. 1251) In that section of the country the laboring and poorer classes buy L L sheetings. (Q. 1252, etc.) He thinks such customers would likely be deceived in supposing that sheetings with L L on them, without any other name, as prominent as the Badger State, would be deceived in thinking them the Lawrence goods.

At Red Wing, Minn.

CLIFFORD BELANGER. (Q. 1301) If we want Lawrence L L we order it as Lawrence L L. (Q. 1302) We have sometimes ordered the Lawrence L L and received Beaver Dam or Badger State instead. Sometimes we have ordered the Badger State L L, and got the Lawrence L L."

A. H. BOXRUD. (Q. 1338) Should he get an order for Lawrence L L and was out, but had Beaver Dam or Badger State, he would substitute the one on hand for the Lawrence L L.

At Hastings, Minn.

F. W. MEYER. (Q. 1478) "We ordered Lawrence L L and received Beaver Dam L L in its place."

At St. Paul.

C. J. MCCONVILLE. (Q. 1490) His house handles Badger State, Beaver Dam, Graniteville, Hoosier, and Aurora L L besides the Lawrence. (Q. 1493) Frequently receive orders for such sheetings as "L L sheetings." (Q. 1494) And they are filled by giving the customers any of the other L L's mentioned. (Q. 1523) He believes it to be a fact that to the extent that the other L L's are mentioned or sold in the market, that they have taken away the trade of the other, Lawrence L L.

C. O. KRIEGER. (Q. 1555) His house has handled Housewife, Indian, Badger State, Beaver Dam and Aurora L L besides the Lawrence. (Q. 1556, etc.) His house receives orders for L L sheetings, and they are filled wholly with some of the other brands mentioned, because there is less margin or profit on the Lawrence L L. (Q. 1567) It is a fact that the Lawrence L L at times are kept hid, and not sold unless specially asked for.

At Minneapolis, Minn.

J. P. SIMPSON. (Q. 251) An order for L L he would understand it to mean Lawrence L L, and if they had them would fill them with Lawrence L L; but if not would fill them with Badger State L L. Mackey, Nisbet & Co. made a L L sheeting for his house and branded it Minneapolis L L.

At Chicago, Ill.

ROBERT HILL. (Q. 1617) Wisconsin L L is his private brand made by the defendant, the Beaver Dam Cotton Mills, and was so branded "for the purpose of meeting the competition created by other brands of L L which are simply in my estimation counterfeits of Lawrence L L. (Q. 1618) Nearly every house in the West and Northwest adopts a private stamp on one or other of the four-yard cottons made by the different mills, and stamps them L L, or have them stamped L L, to the end that competition with the Lawrence L L may be made and is made a matter of personality in every jobbing house. (Q. 1620) "We have sometimes given western and southern L L so much preference that we have removed the Lawrence L L from our stands and counters, keeping them out of sight, and selling in preference the western and southern goods. (Q. 1621) This has been done to the detriment of the sale of L L's made by the Lawrence Company. (Q. 1622, etc.) We

have sold the Badger State, Beaver Dam L L and other L L's made by the Aurora Cotton Mills and the Evansville Cotton Manufacturing Company. (Q. 1633, etc.) We have received orders for L L sheeting and filled them with any other L L's but the Lawrence. (Q. 1635) *I believe that the trade in many cases have been deceived, and that the use of L L on other sheetings has led retail dealers into the belief that they were buying Lawrence L L.*

The following is from Defendant's Testimony:

ERNEST S. HOBBS. (P. 399) Superintendent of the Aurora Mills since March 15, 1884. (Q. 170) The mill began to manufacture brown sheeting October 1, 1884, and to put L L on its four-yard goods. (Q. 196) He has known the significance of L L for six or eight years. (Q. 248) He was instrumental in having defendant put L L on four-yard sheetings. (Q. 256) L L stamped on such sheetings with blue ink, same as Lawrence, and the same relative position as L L on the Lawrence, and it was done with a design, and he thought at the time they would be in competition with the Lawrence L L's, and they expected L L would be seen by the buyer. (Q. 277) They stamped L L with a private brand for their customers. But on instruction from defendant's lawyer he refuses to tell for whom.

REUBEN HOBBS. (P. 416) Director of the Aurora Company. (Q. 74) He was instrumental in the selection of L L on its four-yard sheetings. (Q. 87) He was then familiar with the Lawrence L L's.

E. B. MORGAN. (P. 304) A partner of the firm of Mackey, Nisbet & Co., and also Secretary and Treasurer of the Evansville Manufacturing Co., for ten years. (Q. 448. etc.) His company commenced to brand L L on its sheetings 7 years ago, *i. e.*, in 1879. (Q. 504) Adoption and change of brands was done by Mackey, Nisbet & Co.,

selling agents of the country. (Q. 505) He has known of the L L sheetings made by the Lawrence Manufacturing Co. 10 or 12 years. His company is accustomed to brand its four-yard sheetings with L L, and with private brands of its customers. (Q. 507) He mentioned the following as some of the private brands, but prefers not to give the names of the "customers for whom they are branded, because they prefer not to be known," to-wit: Lancaster, Binghampton, Indiana, Missouri Valley, Adirondack, Hyde Park, Minneapolis, Kaw River and Wabash L L's. There are others we have branded a few for but I cannot recall their names. (Q. 508, etc.) *There is nothing on such private brands to indicate for whom they are made, or by whom.* (Q. 513) *The reasons given by his customers that they do not desire it known was, "that they did dot want their competitors to know where it came from."*

At New York.

H. A. Coburn. (P. 16) A buyer of dry goods for out-of-town houses since 1873. (Q. 121) Would not take Appleton X X unless Upham, Tucker & Co. would put L L on it.

E. P. Smith. (P. 280.) (P. Q. 264, etc.) He handles a four-yard sheeting branded Matthews' L L, made by the Matthews Cotton Mill Company, Alabama. (Q. 293) Such goods are in competition with *the* L L's of the Lawrence Manufacturing goods.

John Buchanan. (P. 323, W. 675) Purchased Lawrence L L sheetings 15 or 16 years ago. Now handles mostly goods of southern manufacture. (Q. 677) Any sheeting with L L on it means a four-yard sheeting. (Q. 681) Has handled the Adirondack L L and several other brands he cannot remember. (Q. 695) "Once in a while a customer would come in and would have nothing but

Lawrence L L, we could sell him at the price or pass the customer; we often refused to sell them." (Q. 693) A great many times we would not sell Lawrence L L unless compelled to do it, because we lost money on it.

N. B. DAY. (P. 329, W. 717) His house has handled Peerless L L, Palmatola, Adirondack, Aurora, Beaver Dam, Graniteville, Pacolet, Forrest City, Atlantic, and Hoosier State L L, made by the Peerless Cotton Mills; they so stamped them by his request. (Q. 731) Palmatola and Hermitage by the Nashville Cotton Mills. Adirondack by the Evansville Cotton Mills. (Q. 732) The Gregory is a private brand. (Q. 737) There is a benefit by having L L stamped on sheetings. (Q. 738) And we have Peerless L L and Gregory specially stamped for our house in order to avail ourselves to the trade of this benefit, with more particular reference for having a brand for which they are obliged to come to us to buy.

At Indianapolis, Ind.

N. S. BYRAM (p. 249, q. 958, etc.) He handled Wabash L L, a private brand made by the Evansville Manufacturing Cotton Company at his request. (Q. 961 to 965) He has them so stamped to indicate to the trade that they are four yards to the pound; no other letter will convey the same significance to the trade, unless they are educated that way. (Q. 968, etc.) He knows of other four-yard goods stamped with other letters, and the reason he did not select one of these other letters, "was that the quality of other four-yard goods are not the same, and L L not only designates the weight but the quality of the fabric as to fineness of the thread of which it is composed, together with what is known to the trade as the count or number of threads to the square inch. (Q. 976) *The Lawrence Manufacturing Company built up this reputation to the trade twelve or fifteen years ago.* (Q. 980) It is a

benefit to his trade to have L L on the sheetings. (Q. 981) He sometimes pushes Wabash L L in preference to the Lawrence L L's. (Q. 982) He sometimes keeps the Lawrence concealed from off his tables and exposes to view the Wabash L L's. (Q. 991) He had L L put on his goods in order "to get whatever benefit there was, for the reason of the fact that they were standard L L's."

At Cincinnati, Ohio.

E. W. STIMSON (p. 348, q. 1057) Has handled the Hoosier L L (Q. 1070, etc.) His house has sold other L L's in preference to the Lawrence while he had the Lawrence in stock, "*because there was a better margin in other L L's than the Lawrence,*" *and have concealed the Lawrence, keeping other L L's exposed to view.* (Q. 1080) He thinks it was an advantage to his trade by having L L stamped on his private brand. (Q. 1084) There is nothing on it to state for whom or by whom they were named.

GEORGE M. GOODWIN. (P. 382) The treasurer of the defendant company since 1864, and has the general management of the business of the company; is its executive officer. (P. 162) (Q. 269, etc.) He has frequently visited numerous cotton mills in the United States, and has known the reputation of the Lawrence L L for 6 years, more or less. (Q. 272) Commenced branding his four-yard goods with L L 18 months or 2 years ago. (Q. 273) Before he adopted the use of L L on his four-yard goods, he branded them "exactly as now, minus the L L," the brand being the Cumberland sheetings 4–4, "Cumberland" being in one line, with an open-face letter "sheeting" being in a line immediately under it, and 4–4 immediately under "sheetings." (Q. 276, etc.) He has endeavored to keep himself informed on the market price of the brands of goods that come in direct competition with the manufacturers of his company. (Q. 284)

He sold his four-yard goods to a larger extent in the St. Louis market before they were branded L L. (Q. 290) "*It is a fact that it was suggested to us to affix L L to our Cumberland stamp by our customers*, the reason being stated that L L had grown and accepted by the trade as a distinctive mark for four-yard goods, and inasmuch as Cumberland sheeting came under that class, it should carry a distinctive mark four-yard goods." (Q. 291) And it was in pursuance of such suggestions that he adopted L L on his goods.

Atlantic L L.

Extracts from Defendant's proof.

At Lawrence, Mass.

JONATHAN C. BOWKER. (P. 257) Bookkeeper for the Atlantic Mills for thirty years. (Q. 5) The Atlantic Mills stamped L L on its sheetings since 1862; there have been interregnums. * * * The weight, yards per pound, as we call it, of the first made average 4.30 yards to the pound. About a year after the first were made, it was changed to 4.56 yards to the pound. Later on * * * in 1872, the weight of the goods was changed to five yards to the pound. In 1862, I have already given it, was 4.56 yards per pound. Then, as I have said, it was not continuous. (Q. 6) "There were no L L goods made, what we call the L L goods, in the year ending May 8, 1863. We commenced making them again in the summer of 1864, and continued for one year, then there was another interregnum from June, 1865, to January, 1872. * * * They have been made continuously since that time." (Q. 15) The Atlantic Mills stamped its goods L L in 1862, "and a comparatively small amount." (Q. 16) The book shows an average yard per pound, for the six months ending May 10, 1862, to be 4.568 of a yard to the pound. (Q. 17) From May 10, 1862, to May 14, 1864, the Atlantic

Mills did not stamp any of its goods with L L. (Q. 18) Those made in 1864 "were of the average weight of 4.749 yards to the pound." (Q. 19) And so stamped them for a year, until about same time of 1865. (Q. 20) "For the six months ending June 10, 1865, the L L's averaged 4.7873 yards per pound. (Q. 21, etc.) From 1861 to 1868 the Atlantic Mills branded their sheetings with several letters of the alphabet, and its four-yards sheetings were branded with the letters F K E and B.

BOWKER, recalled—(P. 262) And stated in answer to question 36, that the Atlantic Mills, in the early part of 1860, stamped a sheeting with L L that weighed 4.198 yards to the pound, and to question 37, he stated that at the same time this mill made a sheeting with a single L on them, that is for the six months ending 1860, which averaged 3.892 yards to the pound (*i. e.*) a four-yard sheeting.

Extracts from Complainant's Testimony as to Atlantic "L L."

At Boston.

E. E. WILSON. (Q. 149, etc.) The Atlantic L L is a different class of goods and a distinctive sheeting from the Lawrence L L.

At New York.

W. M. SMITH. (Q. 290, etc.) The Atlantic L L is not of the same kind, quality, and grade of goods as the Lawrence L L; it *is an entirely different grade of goods.* (Q. 292, etc.) They are five-yard goods, and are not put in competition with the trade with the four-yard goods.

CHARLES S. SMITH. (Q. 494) And the statement of the witness at the close of his testimony (P. 91) should be read together, the substance of which is that twenty-four

years before he was "a partner in S. B. Chittenden & Co. at one time, and that firm was the largest sellers for a considerable time of anybody in the trade of Atlantic goods. I bought them myself when I was a partner of Chittenden." (Q. 495, etc.) "To the best of my recollection, although the largest buyer of Atlantic goods at that time, I never myself bought an L L that I can recollect. *The production of that mill on this article was not much consequence to the trade.* I never recollect an Atlantic L L, except as a five-yard sheeting, or about that." (Q. 497) "I was a very large buyer of Atlantic sheeting from 1857 to 1861 and 1862, probably the largest buyer in the United States, I think. I do not recollect that I ever bought a bale of Atlantic L L. We used to buy Atlantic A and Atlantic L, and several of their brands very largely, and a brand they called Specific, but I cannot recall that I ever bought a bale of L L, and I did not know they made them at that time." (Q. 498) "I do not recollect that they were ever made, that is when I was a buyer of the goods. I have known that these goods have been made, but they have been made in such small quantities that they have made no impression upon my mind as a large buyer of domestic goods. I would not go back as far as that, nothing like it (*i. e.*, that the Atlantic L L's were made twenty-four years ago). I do not recollect anything about them, except as a five-yard article in a small way." (Q. 541) I did not know that they had actually done it (*i. e.*, that the Atlantic Mills had stamped any of its sheetings L L), until the time this suit was commenced, I believe; I know it was entirely new to me at that time. (Q. 540) And L L on these made by the Atlantic Mills represented five-yard sheetings and did not come in competition with the Lawrence L L "the least in the world," nor with any other four-yard goods.

M. I. Cooley. (Q. 2296) The difference between *the* L L's and the Atlantic L L's is in the weight of the goods;

they are never confounded for each other, for just the reason of the weight in the goods. (Q. 2297) I should say that the difference was largely defined.

At Kansas City.

GEO. R. CHUMASERO. (Q. 725) The Atlantic L L's are fine brown, not heavy brown. *They do not come in contact with the Lawrence L L.* (Q. 826) And are known in the trade as Atlantic L L.

E. B. WINGATE. (Q. 760, etc.) The Atlantic L L's are a five-yard goods, and *do not come in competition in* the market any way with the four-yard goods.

JAS. H. DAYTON. (Q. 842, etc.) He knows of the Atlantic L L, which was a five-yard goods. It was a *different grade* of goods, *and did not come in contact with the Lawrence L L's.* (Q. 904) "I lost sight of the Atlantic L L goods when speaking of four-yard goods.

At Winona.

E. WILLIAMS. (Q. 1201, etc.) Handled Atlantic L L's, a somewhat lighter goods than Lawrence L L's, but he does not know the weight. (Q. 1223) *It does not come in contact with the Lawrence L L's.*

ALF. BROOKS. (Q. 1257) Never had Atlantic L L's.

At Red Wing.

CLIFFORD BELANGER. (Q. 1304, etc.) Has not handled the Atlantic L L's very much, not enough to know by what class of persons it is used, *and does not know its weight.*

A. H. BOXRUD. (Q. 1332) Does not think he ever handled Atlantic L L.

At Hastings.

D. E. EYRE. (Q. 1375) Never handled the Atlantic. Thinks he has seen it a good many times.

GEORGE H. GILLETT. (Q. 1445) "I do not remember handling the Atlantic; I think I have."

At St. Paul.

C. J. MCCONVILLE, with large jobbing house. (Q. 1504) Does not think he has ever handled Atlantic L L. Does not remember that he ever bought them. (Q. 1505) Nor to have seen them in any jobbing houses. (Q. 1506) Thinks he has seen them quoted, but is not sure.

At Chicago.

ROBERT HILL, large jobber. (Q. 1593) Four-yard sheeting does not come in competition with five-yard sheetings; "standard sheetings compete with other standard; four-yard sheeting with other four-yard sheetings; five-yards with other five-yards. (Q. 1608) *Atlantic L L's does not come in competition with other L L's, simply because there is a difference in weight, in texture, in value, and in the manner in which it is put up.*" (Q. 1681) L L on Atlantic goods "cannot by any possibility have any significance as regards value or texture, because it is different in weight, different in texture, and different in manner in being put up." (Q. 1632) *So far as Atlantic L L is known, these differences are known to the trade.* If I might be allowed to qualify that, I would say that the production of the *Atlantic L L* is exceedingly small, and *it is not a common factor in general jobbing stock.*" (Q. 1644) He understands L L branded on Atlantic goods to indicate a so-called five-yard sheeting. (Q. 1687) I have not known Atlantic L L longer than 15 years. I have known Atlantic A and Atlantic P longer than that, say 20 years.

W. R. MacKendrick. (Q. 1712) The Atlantic L L is understood to be a five-yard goods. (Q. 1717, etc.) *It does not come in competition with the Lawrence L L* on account of its being much lighter in weight. (Q. 1721) Atlantic L L is known to the retail trade, to those familiar with the brand, as a distinctive sheeting from the Lawrence L L. (Q. 1722) It is different to the eye and feel. (Q. 1724) I understand Atlantic L L to mean a light weight fine brown muslin, and Lawrence L L a medium weight coarse brown muslin. (Q. 1725) And the majority of his customers know this distinction. (Q. 1727) When a customer asks for a fine brown muslin he would show him the Atlantic L L for a fine light weight, and not the Lawrence L L. (Q. 1738) *I do not think that the province of the one sheeting is the same as the other under any circumstances.*

H. L. Pinney, with Marshall Field & Co., wholesale department. (Q. 1766) *Atlantic L L's do not come in competition with the other L L's mentioned.*

Duncan Campbell, with Charles Gossage & Co. (Q. 1861) Does not remember to have handled Atlantic L L.

C. A. Teague, With Carson, Pirie & Co. (Q. 2032) *Never handled Atlantic L L's.*

R. W. Young. (Q. 2060) *Never handled Atlantic L L's.*

J. W. Spangler. (Q. 2085) The difference between the Atlantic and Lawrence L L "is one is fine and the other is coarse."

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Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 101.

THE LAWRENCE MANUFACTURING COMPANY, Appellant,

vs.

THE TENNESSEE MANUFACTURING COMPANY.

Additional Brief for Appellant on the Question of Appellate Jurisdiction.

W. B. HORNBLOWER and
J. H. RAYMOND,
For Appellant.

United States Supreme Court.

October Term, 1890. No. 101.

LAWRENCE MANUFACTURING COMPANY,
APPELLANT,

vs.

TENNESSEE MANUFACTURING COMPANY.

MAY IT PLEASE THE COURT:

In addition to the statements contained at page 55 *et seq.* of appellants' general brief, we beg respectfully to submit the following, upon the suggestion made by appellee, that the Court should, *sua sponte*, dismiss this appeal for want of jurisdiction.

If appellee desired to raise the question it should have done so by a regular motion under the rules, with three week's service of the motion papers and with an opportunity to appellant to file affidavits in reply, in connection with which, proper proceedings might have been taken by appellant to compel appellee to disclose further material facts.

If doubt remains upon this question, it certainly would be inequitable to dismiss this appeal and then practically affirm the decree below, and practically deny all rights in, and all relief to appellant, without opportunity either in this Court, or by an inquiry in the Court below, to further ascertain and present the mathematical side of the matter.

If the question is raised by the Court it stands upon the allowed petition for the appeal, with the supporting affidavit of Veeder (pp. 479–484).

The defendant's affidavits filed below are wholly insufficient to show want of jurisdiction. Complainant showed a *prima facie* case by its sworn petition, setting forth that "*the exclusive use* of said letters (L L) *as against this defendant*, if judicially confirmed to your petitioner, *would be hereafter to your petitioner of the value of more than $10,000.*" (Folio 704.)

This allegation was sufficient to give this Court jurisdiction. The exclusive use, as against the defendant, is the object of this suit. This is the "matter in dispute" within the meaning of the statute, namely, whether the defendant shall be enjoined from using the letters "L L," and whether, as against the defendant, the complainant shall have the exclusive use thereof.

Defendant's affidavits nowhere meet this allegation. They are confined to statements as to the actual "*net* profits" made by defendant on the goods sold by it under this trade-mark. They state that the petition for the allowance of the appeal was sworn to by one Veeder, who is alleged to be a business associate of complainant's solicitor, and not a cotton manufacturer. They further state that he could not possibly know the profits made by defendant. But it was not at all necessary, in order to enable Mr. Veeder to swear to the value of the exclusive use of the complainant's trade-mark, as against defendant, to know the profits made by defendant. Defendant may have sold its goods constantly at a loss, and may have done so for the very purpose of cutting into the sales of complainant, and establishing a reputation for its own goods, which it might subsequently turn to its profit; or defendant may have been unfortunate or unskillful in the management of its business, so that the expense of manufacture may have been out of all proper

proportion to its sales, or may have been grossly wasteful or extravagant.

Shall it be said that for this reason complainant shall have no right of appeal to protect a valuable trade-mark from infringement? Surely not. The test is, what is the value to *complainant* of the right sought to be protected? Mr. Veeder could swear to this value if he knew the total value of the annual output of complainant's mills under the L L trade-mark, and if he knew facts defendant's infringement and defendant's competition from which, as a reasonable man, he could conclude that under the "L L" mark would reduce complainant's sales or complainant's profits on sales by at least $10,000. Is there anything to show that Mr. Veeder did not have such knowledge? Nothing. Having so sworn, there is a *prima facie* case made for appeal which can only be overcome by positive proof on the part of the appellee. There is no such proof. Defendant's affidavits are wholly confined to the question of profits made by defendant. And even as to these profits we have only the vaguest *conclusions* of the affiants. The statements are confined to the amount of "*net* profits derived from the production and sale of Cumberland L L goods" (see fol. 709). But how are the *net* profits arrived at? After deducting losses on bad debts, wear and tear of machinery, salaries of officers, interest on bonded indebtedness, and all other expenditures of defendant's business? It would seem so. At any rate, it may be so. But surely that is not the meaning of the term "profits" as against the infringement of a patent or of a trade-mark.

Defendant does not give us a single fact or figure by which we can verify this conclusion as to net profits and determine whether they are or are not the profits which we could recover if successful in this suit. Defendant does not give us the number of yards sold by it nor the price per yard. This would be the true way to show how

much or how little complainant had suffered from defendant's infringement or from defendant's competition.

The appellee's very late suggestion to dismiss the appeal, as set forth in the affidavits below and in the brief of counsel, is based upon an entire misapprehension of what is the "matter in dispute" in this suit. It is assumed and argued that the "matter in dispute" is the amount which the complainant, if successful, could recover from the defendant by way of profits; but this is not correct. The amount of the money judgment which we could obtain is not the only nor the principal "matter in dispute." We seek an injunction to prevent infringement, and, as we have already said, that is equivalent to obtaining the exclusive use of our trade-mark. The value of that exclusive use as against the defendant is the test and not the amount of defendant's profits.

How is that value to be determined. Manifestly by first ascertaining the extent of complainant's sales under the trade-mark and then determining as best we can the extent to which those sales and our profits may have been, or may hereafter be, diminished by defendant's infringement and competition under this trade-mark. We cannot expect to arrive at absolute accuracy on this subject. The nature of the case precludes absolute accuracy. It must be largely a question of inference and judgment. But we should not be deprived of all right of appeal to protect our valuable rights merely because we cannot now figure out to a certainty the exact amount of our injury or damage from defendant's infringement or the exact value of our exclusive use. It should be sufficient that the Court can find facts in the record from which it may reasonably be inferred that this exclusive use is worth more than $5,000.

Now, we have in this case the sworn petition containing the statement above set forth, which is not met by the affidavits of the defendant that the value of the ex-

clusive use of complainant's trade-mark as against defendant would be more than $10,000.

We have, further, the allegation also entirely uncontradicted by defendant's affidavits, that the damages on account of the continued use by defendant of said letters heretofore "would, upon a proper accounting, be found by the court to be, exclusive of costs, a sum in excess of $5,000." (Fol. 705.)

Then we have the further allegation that "the effect of this opinion and judgment of this Court, both in law and in fact, is to cancel and annul said trade-mark *as to all parties* in the United States pending the obtaining of the opinion and mandate of the Supreme Court of the United States herein, and that the opinion and mandate of said Supreme Court in this present case, upon such appeal as is now prayed, would have the effect either to confine said exclusive use of said letters to your petitioner or to annul and cancel said trade-mark so claimed by your petitioner, and that said alleged trade-mark and said exclusive use are of the value to your petitioner of upwards of $50,000 as aforesaid." (Fol. 705.) We may concede, for the purposes of the argument, that we cannot maintain our appeal by showing the effect of this suit collaterally upon other controversies, yet when the very matter in controversy is the exclusive use of our trade-mark, we surely have the right to show the value of such exclusive use as a basis for determining the amount in controversy as against the defendant in this suit.

Turning to the testimony, we find the total output of "L L" cloth by complainant from October 26, 1866, to October 31, 1885, to be 214,119,594 yards, being an average of over 11,000,000 yards per annum; or, taking the last three years of this period, we have an average of over 22,000,000 yards per annum (see table at page 27 of the Record). Now, assuming that this was sold at an

much or how little complainant had suffered from defendant's infringement or from defendant's competition.

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average of five cents per yard (see "Sheldon's Weekly Dry Goods Price List," being "Exhibit McKay E" and showing the price to be $5\frac{1}{4}$ @ $5\frac{1}{2}$ cents per yard), we would have during the last three years an annual output under this trade-mark of upwards of $1,000,000. The sum of $5,000 is such an infinitesimal proportion of this sum, being only half of one per cent., that the Court might well assume for the purposes of this appeal, that the complainant's injury by defendant's competition would be at least that amount, and that the value of the exclusive use of the trade-mark, as against defendant, would be at least $5,000.

The controversy in this suit is similar to that in a suit to restrain a continuing nuisance or trespass upon real property owned by complainant. The value of the subject-matter in controversy in such a suit is the permanent diminution in the value of the realty, assuming the nuisance or the trespass to be continued indefinitely.

A decree is frequently made in the nature of a decree *nisi*, granting a perpetual injunction unless defendant shall pay the amount of such permanent diminution.

So in this suit the value of the matter in dispute is to be determined by arriving, as near as may be, at the permanent diminution in value of complainant's trade-mark by defendant's continuous trespass by infringement. We cannot determine this amount with mathematical accuracy, but we have certainly set forth facts from which the Court can reasonably infer that this permament diminution will be at least $5,000.

The following cases illustrate the principles to be applied to this question:

Stinson *v.* Dousman, 20 How., 461.

This suit was brought to recover $481.16 as the rent of a parcel of land in the city of St. Paul under a written contract whereby plaintiff had covenanted to sell to the

defendant the land for the sum of $8,000. The contract contained a clause that in case the vendee fails to perform any covenant on his part, the vendor may declare the contract void and recover by distress or otherwise all the interest due on the contract as rent. The answer of the defendant was so framed as not only to present a legal defense against the claim preferred in the petition, but also to obtain a decree affirmative of the validity of the contract of sale.

Held, that as the effect of the judgment would be to adjust the legal and equitable claims of the parties to the subject of the suit, the Court had jurisdiction; the subject of the suit being not merely the amount of rent claimed, but the title of the respective parties to the land under the contract, which was shown by the contract to be $8,000.

Harris *v.* Barber, 129 U. S., 366.

Where the petition for a writ of *certiorari* alleged upon the oath of the petitioner that he is in the possession of premises under a lease having nearly a year to run, with the privilege of extension for four years more, and that he has expended $15,000 in permanent improvements upon the leased property, of which he will be deprived if the judgment of the inferior Court is not set aside by writ of *certiorare: Held*, That the reasonable inference from this is that the possession of the premises, with the right to use these improvements throughout the lease and the extension thereof, is worth more than $5,000, showing that the matter in dispute is of sufficient pecuniary value to support the jurisdiction of this Court.

Kenaday *v.* Edwards, 134 U. S., 117.

The value of the specific property which is in litigation must determine the jurisdiction of this Court. The value of the trust estate, the ownership of which is involved, is

the value of the matter in dispute for purposes of an appeal by the trustee in a proceeding to set aside a sale by a trustee as fraudulent and to remove the trustee. The amount is not limited to the commissions to which the trustee would be entitled.

People *v.* Horton, 64 N. Y., 58.

Under the section of the New York Code of Civil Procedure prohibiting appeals to the Court of Appeals in cases involving less than $500: *Held*, that in an action brought to restrain the carrying on of a business where no sum of money was demanded in the complaint, nor was the value of the business stated in the pleadings, and where judgment was given for the defendant, but where the testimony showed the yearly amount of the business to be more than $500, plaintiffs were entitled to appeal.

Folger, J., says (p. 59): "It is shown in the testimony that the defendants, during the season in which the trial took place, transferred with their elevator over 2,000,000 bushels of grain. It appears that it was worth to do this one-half cent per bushel, which would give over $10,000 as the result in gross to the defendants of that season's business. Whether or no they shall be restrained from longer carrying on this business is the question at issue in the action, and is the subject-matter of the controversy. That subject-matter is therefore in amount more than $500."

Lattimer *v.* Livermore, 72 N. Y., 174.

Under the provision of the Code of New York authorizing an extra allowance by way of costs to the successful party in a suit of five per cent. upon the value of the subject-matter involved: *Held*, that in a suit to restrain interference with an easement the value of the easement was the proper basis for the extra allowance.

Burke *v.* Candee, 63 Barb., 552.

In an action to have certain deeds of lands worth $30,000 declared to be mortgages, and that the defendant be declared to hold the title as trustee, the Referee found against the plaintiffs, and reported that the deeds were absolute and vested the fee in the defendant. On a motion for an additional allowance: *Held*, that the basis of estimate was the value of the property directly affected by the judgment, that being the subject-matter involved, and that an allowance based on the value of the property was proper.

Respectfully submitted.

W. B. Hornblower,
J. H. Raymond,
For Appellant.

Washington, D. C., *December* 1, 1890.

Office Supreme Court U.
FILED.
NOV 24 1890

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1890.

IN EQUITY.

LAWRENCE MANUFACTURING CO.

—VS.—

TENNESSEE MANUFACTURING CO.

ARGUMENT OF

DICKINSON & FRAZER,

Solicitors for Appellee.

Marshall & Bruce, Stationers, Nashville.

UNITED STATES SUPREME COURT.

LAWRENCE MANUFACTURING COMPANY

vs.

TENNESSEE MANUFACTURING COMPANY.

STATEMENT.

The question in this case is whether or not complainant has the right to prevent defendant from using the capital letters "LL" upon brown cotton sheetings that weigh four yards to the pound.

The Lawrence Manufacturing Company alleges and undertakes to prove that, prior to the year 1870, it became vested with the exclusive right to use a trade-mark, the chief feature of which is the letters "LL," and that this trade-mark, with certain environments, has been used by complainant since said date for the purpose of distinguishing sheetings of its manufacture of the class named from similar goods made by others; and that, in connection with this trade-mark, it has used the words "Lawrence Mills" and "Sheetings," and, at times, the picture of a bull's head, and at other times of the whole body of a bull rampant. (*Trans.*, 2.)

It further alleges and undertakes to prove that the defendant uses letters "LL" in a way that infringes its trade-mark right, and also in a way to deceive the public by using a stamp or label in imitation of that of complainant.

Defendant admits that it is using the letters "LL" upon its mark to brand cotton sheetings of the class named, but denies that complainant has or ever had any right to use these letters upon such sheetings as a trade-mark, and denies that it is using it for the purpose of representing to the public that the goods upon which it is used were made by complainant. It alleges and proves that the capital letters are placed on sheetings weighing one-quarter of a pound to the yard to designate sheetings of that class; and that they are thus used in common by the manufacturers, on sheetings of this weight, to denote the grade and quality of such sheetings; and that sheetings upon which the letters "LL" are impressed are understood by the trade thereby to weigh four yards to the pound; and that, in trade parlance, such goods so marked are called 4-yard sheetings; and that before their use by defendant "LL" had acquired in the trade the general and fixed meaning of 4-yard sheeting without respect to origin.

Defendant states that since 1885 it has manufactured a brown sheeting of that weight, and has stamped upon the sheeting the words "Cumberland Sheetings," with the figures "4–4" beneath

them, and with the capital letters "LL" below the figures "4–4;" and that it used the word "Cumberland"—the name of the river near which its works are located, at Nashville, Tennessee—to designate the place of manufacture, and that the goods are so known wherever they are sold; it used the word "Sheeting" to denote the general character of the goods, and the letters "LL" to denote the class to which they belong. The figures "4–4" indicate that the goods are one yard wide. It denies that its stamp bears any resemblance to complainant's, and that the most casual observer would confound them. (*Trans.*, 8.)

Complainant impresses upon its sheetings the picture of a bull's head at the top, and then the words "Lawrence Mills Sheetings," and the letters "LL" beneath.

Defendant states and proves that very many factories use the letters "LL" upon sheetings of this class to denote the grade and quality, and that some other word is added to indicate the origin and the maker of the goods, and that upon all such goods the "LL" indicates to the trade that the goods weigh four yards to the pound, and that the trade throughout the United States so understand it. (*Trans.*, 7.)

Defendant states that complainant cannot lawfully set up any trade-mark right to said letters "LL," because they do not indicate origin or owner-

ship, and do not, as described and claimed, have the characteristics essential to make them a lawful trade-mark; that the words "Lawrence Mills" are used upon complainant's label to indicate the origin of the goods, and that these words, together with the representation of the bull, constitute complainant's trade-mark. (*Trans.*, 6–8.)

Defendant also states and proves that the letters "LL" were used by the Atlantic Mills of the United States on sheeting made by them before complainant used them. It further states and proves that letters are used generally in the United States by manufacturers and purchasers to designate classes of goods, and defendant further states that complainant fails to allege that it first adopted and used this symbol as a trade-mark upon sheetings before any other person adopted it, and that, therefore, it cannot set up a right to it as a trade-mark. (*Trans.*, 9.)

PRIOR USE OF "LL" BY ATLANTIC MILLS.

The proof shows that the Atlantic Mills, of Lawrence, Massachusetts, stamped "LL" upon brown sheeting of its manufacture in 1860, 1862, 1864, 1865, and from 1872 down to the present time; that there were cessations in the manufacture of said goods from time to time between 1860 and 1865, and that none were manufactured from

1865 to 1872 (*Trans.*, 258, 263, 265); and that said goods known as "Atlantic LL" were in the trade handled and sold as merchandise *constantly* from 1865 to the present time. (*See Table I., pages* 6, 7.)

TABLE I.—ATLANTIC LL: WHEN AND WHERE SOLD OR KNOWN IN THE TRADE.

TIME.	PLACE.	WITNESS.	SPECIAL REMARK.	QUESTION.	TRANS. PAGE.
Between 1863–1870	Boston and New York	Kilburn	This witness is agent for complainant	121	22
5 or 10 years	Boston	Thomas		218	34
15 to 18 years; thinks as early as 1864	New York	W. M. Smith	Former agent of complainant	288, 289	41
10 or 12 years	New York	Eames	One of firm of Claflin & Co	324	44
24 years ago	New York	C. S. Smith	Former agent of complainant	493	58
For 5 years	New York	Page		575	65, 66
For 5 years	Kansas City	Wingate		804	87
In 1875 and few years thereafter	Omaha	Houghton		1067, 1092	107, 110
Many years	Council Bluffs	Harkness		1112	112
Used it	Council Bluffs	Eiseman		1136	114
Long time	Council Bluffs	Cooke		1175, 1176	119, 120
Handled it	Winona, Minn	Williams		1210, 1212	123, 124
	Winona, Minn	Brooks		1258	128
	Red Wing, Minn	Belanger		1304	132
Within 5 years	Hastings, Minn	Gillett		1437½	145
15 years	Chicago	Hill	Been in trade as long as I can remember, with intervals between production; known it personally 15 years	1639, 1640	166
9 or 10 years	Chicago	McKendrick		1711	173
15 years	Chicago	Pinney	With Marshall, Field & Co	1788	180
10 or 12 years	Chicago	Roepstorff		1922	192
8 months	Chicago	Spengler		2084	207
About 10 years	Chicago	Erickson		2264, 2265	221
21 years	St. Louis	Dodds		628, 631	319, 320

20 years	Indianapolis	Byram		946	250
16 years	Evansville	Hopkins		621	318
Before any other LL	St. Louis	Buchanan	In dry goods business 47 years	667, 674	324, 325
Before any other LL	St. Louis	Boogher	Selling goods 32 years in St. Louis	760	334
Before any other LL	Indianapolis	Erwin	Wholesaler 25 years	1003	341
15 to 20 years	Cincinnati	Specher		1088	353
From 1866 to 1876	Nashville	Frankland	The first I ever saw	18, 46	360, 363
13 years prior to 1886.	Aurora	Scott		88	394
20 years	Aurora	George		295	413
1862 and since		R. M. Hobbs		328, 330	417
1876 to 1886	Aurora	Wilcox		467	429
About 25 years	Aurora	Hawley		517	434
8 years	Chicago	Wilson		647	440

Total, 35 witnesses from 15 different important cities, of whom the first 21 were called by complainant.

SIMILARITY AND COMPETITION BETWEEN ATLANTIC "LL" AND LAWRENCE "LL."

On both the Atlantic and the Lawrence the letters "LL" are solid blue block letters of nearly the same size, while those used by the defendant are larger and are open, fancy letters. (*See Exhibits, Lawrence, Atlantic, and Cumberland.*)

Both of said goods are of the same general character, *and they compete with each other*, and are so near alike in appearance that ordinary buyers, and even experts, cannot, by looking at them, distinguish them from each other. (*See Table II., pages* 9, 10, 11.)

TABLE II.—ATLANTIC LL AND LAWRENCE LL EASILY MISTAKEN FOR EACH OTHER, AND COMPETE.

PLACE.	WITNESS.	SUMMARY.	QUESTION.	TRANS. PAGE.
New York	Page	Casual observer in trade, without feeling goods, cannot, by observation, tell whether goods are 4, 4½, or 5 yards to the pound	584	66
Sedalia	Meuschke	Would take a pretty good judge of goods, getting very close to it and examining closely, to tell difference in weight between 4, 4½, and 5 yard sheeting, not handling it	629	71
Council Bluffs	Eisman	Consumer as likely to take Lawrence LL to be Atlantic LL as to take any of the other brands of LL to be Lawrence LL	1129	113, 114
Council Bluffs	Cooke	An order for LL from one who had used Atlantic LL and not Lawrence LL would probably mean Atlantic LL	1180	120
Winona	Williams	An ordinary consumer who purchases brown sheeting could not ordinarily tell whether the goods were a 4 or 5 yard goods unless he felt the texture	1237	126
Winona	Brooks	Atlantic LL and Lawrence LL both bought by poor people for shirts and underwear	1251, 1259	127, 128
		An ordinary consumer wanting Atlantic LL and seeing Lawrence LL, and looking at the LL and nothing else, would likely think it were the Atlantic LL, unless, by touch or information conveyed to him by another, he learned the grade of the goods. Don't think an expert can tell quality of sheeting by looking at it. An ordinary purchaser could not generally, by mere inspection,		

TABLE II.—ATLANTIC LL AND LAWRENCE LL EASILY MISTAKEN FOR EACH OTHER—Continued.

PLACE.	WITNESS.	SUMMARY.	QUESTION.	TRANS. PAGE.
		tell whether a sheeting were 4 or 5 yard sheeting	1279, 1284	129, 130
Red Wing	Belanger	Don't know how many yards of Lawrence LL or Atlantic LL to the pound	1299, 1305	132
		Both Atlantic LL and Lawrence LL used for general family cotton	1307, 1308	132
Red Wing	Boxrud	Don't know exact weight of Lawrence, and don't suppose consumers know	1319	133
Hastings	Eyre	Looking casually at brand, without feeling or touching, and looking only at LL, one might mistake Lawrence LL and Atlantic LL for each other. To one handling both Atlantic LL and Lawrence LL, the letters LL would not necessarily indicate which brand was meant	1387, 1392, 1393	140, 141
Chicago	McKendrick	Atlantic LL used for all purposes where light weight required; used by sewing machine companies and paper-hangers, and I presume for sheeting, shirting, and general household purposes	1713, 1715	173, 174
		LL would mean Lawrence or Atlantic	1734	175
		In buying for household some prefer Atlantic and some Lawrence	1735	175
		And they are used for the same general purposes	1739	176
Chicago	Lurie	This complainant's witness could not tell Lawrence LL from Atlantic LL, both folded so as to show only LL, and he within four feet of them		196, 197

Chicago	Mandl	When I could not get Lawrence LL for my customers I bought Atlantic LL and sold it to them in its place	2209	217
St. Louis	Dodd	Fifteen years ago Atlantic and Lawrence were both known as LL, and could be used for each other	633, 634, 635	320
St. Louis	Buchanan	A good many years ago would have understood LL to mean Atlantic of about 4 25. When knew Atlantic and Lawrence would for order for "LL" have put in either	665, 682, 683, 703	324, 326, 328
Nashville	Frankland	5-yard brown sheeting used for shirting, sheeting, etc, and competes with 4-yard	20	361
Nashville	Porter	There is competition between 4 and 5-yard sheeting	123	371
Nashville	Connell	Certainly is competition between 4 and 5-yard sheeting	141	373
Nashville	Herman	Both 4 and 5-yard sheeting used by poorer classes for shirting, sheeting, and general household purposes—such as underwear, etc	163	376
Nashville	Goodwin	4 and 5-yard brown sheeting, used for making underwear, shirts, sheeting, linings, facings, sacks, and bags	238	384
		They are in competition with each other for these purposes	240, 241, 261, 264, 265	384, 386, 387
Aurora	Scott		83	393
Aurora	Hobbs		200, 283	404, 412

Total, 21 witnesses, from 9 important business centers. Of the 21 witnesses, 12 were called by complainant.

As a practical demonstration that Atlantic "LL" and Lawrence "LL" cannot, independent of the words Atlantic, and Lawrence with bull's head, impressed upon them respectively, be distinguished, see how Lurie, who was introduced by complainant as an expert, on inspection, thought the Atlantic "LL" was the Lawrence "LL." (*Trans.*, 196, 197.)

LETTERS DENOTE GRADE.

Letters are, and for many years have been, used by manufacturers to designate and distinguish different grades, classes, and qualities of goods made by them; and the entire alaphabet is used in this way, some mills consuming almost the entire alphabet. It is understood, generally, in the trade that letters are thus used to designate grade, class, or quality, and nothing more. (*See Table III., pages* 13, 14.)

TABLE III.—LETTERS ARE USED GENERALLY BY MANUFACTURERS TO DESIGNATE GRADE OR QUALITY, AND SO UNDERSTOOD IN THE TRADE.

PLACE.	WITNESS.	REMARKS.	QUESTION.	TRANS. PAGE.
New York	Lincoln		2385, 2386	233
Lawrence, Mass	Bowker	Book-keeper Atlantic Mills. From 1862 to 1868 branded goods with letters A, C, G, D, H, M, P, V, E L, Q, SS, XX, T, X, N, R, F, ZZ, NN, K, W, I, S, LL, 22 in all	19, 21	259
New York	Clifton		74, 82	267, 268
New York	Coburn		120, 132, 134, 135, 136, 144, 147	271, 272, 273
Baltimore and New York	E. P. Smith		248	281
New York	Milliken		318 to 325	286, 287
Pittsburg	Stephenson		398	294
Louisville	Carter		420 to 442	297–299
Louisville	Bloom			299
Generally	Stipulation	Complainant and others brand a variety of letters on flannels, etc., denoting weight		303, 304
Evansville	Morgan		486 to 489	306
Boston	Sargent	Complainant's Treasurer	472	302
Evansville	Hopkins		614	317
St. Louis	Dodd		624	319
St. Louis	Buchanan		661	323, 324
St. Louis	Day		714, 715	329, 330
St. Louis	Boogher		759	334
Indianapolis	Erwin		998 to 1005	340, 341
Cincinnati	Stimson		1053, 1054	348
Cincinnati	Inglauer		1094	354

TABLE III.--LETTERS USED TO DESIGNATE GRADE OR QUALITY—Continued.

PLACE.	WITNESS.	REMARKS.	QUESTION.	TRANS. PAGE.
Nashville	Frankland		3, 4	359
Nashville	Lyles		77, 78	366
Nashville	O'Bryan		98, 102	368, 369
Nashville	Connell		139, 145, 150	373, 374
Nashville	Herman		160	375
Nashville	Goodwin		232, 233	383

Total, 25 witnesses from 11 different important cities.

LL UNDERSTOOD IN TRADE TO DENOTE GRADE MANY YEARS BEFORE ITS USE BY DEFENDANT.

Forty-eight different brands of the four-yard grade, known as "LL" sheetings, were sold in the trade when the testimony was taken, as follows:

TABLE IV.

	Trans. Page.
Badger State	52
Pacolet	83
Aurora	83
Beaver Dam	83
Graniteville	72
Baltic	107, 108
Hoosier	107, 108
Lancaster	107, 108
Longwood	274
Housewife	274
Superior	297
Indiana	308
Adirondack	308
Albany	238
Clarion	238
Buckeye	40
Michigan	50
Ettrick	67
Kaw River	80
Pride of the South	80
Missouri Valley	84
Binghampton	84
Dayton	90
Greylock	99
Hyde Park	100
Pensacola	105
King Hill	123
Island Park	123
Appleton	162
Wisconsin	162
Lake Michigan	162
Granite Mill	251
Wabash	252
Buckeye Ohio State	274
Victoria	238

TABLE IV.—Continued.

Amazon	295
Matthews	297
Crescent City	305
Minneapolis	308
McGinnis	321
Indian Standard	321
Peerless	330
Palmersola	330
Hermitage	330
Gregory	330
Forest City	330
Indian Warrior	341
Atlantic	23

OF THESE LL BRANDS OF FOUR-YARD SHEETINGS, THE FOLLOWING WERE KNOWN IN THE TRADE GENERALLY FOR THE PERIODS SET OUT.

TABLE V.

NAME.	YEARS.	QUESTION.	TRANS. PAGE
Adirondack LL	7	507, 519, 521	308, 309
Aurora LL	2	459	428
Albany LL	6	576	239
Badger State LL	12	1533	154
Badger State LL	7	409, 410	52
Badger State LL	6	942	96
Badger State LL	6	1070	107, 108
Badger State LL	5	1299	132
Badger State LL	7	2020	201
Badger State LL	10	2264, 2265	221
Badger State LL	10	396	422
Badger State LL	8	758	83
Baltic LL	6	1070	107
Beaver Dam LL	15	751, 752	83
Beaver Dam LL	5	1652	105
Beaver Dam LL	4	1534	154
Beaver Dam LL	10	2264, 2265	221
Hoosier State LL	6	1070	107, 108
Hoosier State LL	4	1536	154
Graniteville LL	5	633	72
Graniteville LL	12	1531	154
Housewife LL	10	159, 160	274
Indiana LL	7	507, 519, 521	308, 309
Buckeye Ohio State LL	10	159, 160	274
Binghampton LL Hyde Park LL Minneapolis LL Lancaster LL	7	507, 519, 521	308, 309

TABLE V.—Continued.

NAME.	YEARS.	QUESTION.	TRANS. PAGE
Lancaster LL	6	1070	107, 108
Longwood LL	10	159, 160	274
Pacolet LL	4 to 15	751, 752, 755	83
Pacolet LL	10	2264, 2265	221

This suit was brought and the proof was taken in 1886.

Thus, before this suit was brought seventeen brands of "LL" four-yard sheetings had been known in the trade variously from two to fifteen years; and sixteen of them had been so known more than five years.

Defendant began to brand its sheetings "LL" in 1885. (*Trans.*, *Q.* 272, *p.* 388.)

Thus, when it began to use these letters there were sixteen of such brands known in the trade besides the Lawrence and Shawmut, and had been so known for more than three years, and most of them for more than five years.

At that time "LL" had acquired the general and accepted meaning of "four yards to the pound" when stamped on sheetings. For evidence, see Table VI., pages 18, 19, 20.

TABLE VI.—LL GENERALLY STAMPED ON SHEETING WEIGHING 4 YARDS TO THE POUND, AND UNDERSTOOD IN THE TRADE AS DESIGNATING GRADE.

PLACE.	WITNESS.	REMARKS.	QUESTION.	TRANS. PAGE.
New York	W. M. Smith	Formerly complainant's agent	307, 308	43
New York	C. S. Smith	Formerly complainant's agent	399, 400	52
New York	Page	LL on Lawrence and Graniteville indicates 4 yards to the pound	562, 563	65
Sedalia, Mo	Meuschke		624	71
Kansas City	Wingate		810	87
St. Joseph	Sanders		975	98
St. Joseph	Byrne		994	99, 100
Omaha	Hodd		1041	104
Omaha	Houghton	Retailers understand it means grade, but do not know weight	1078	108
Winona, Minn	Williams		1216, 1218, 1239, 1240, 1241, 1245	124, 126, 127
Winona, Minn	Brooks		1269, 1271	129
Hastings, Minn	Eyre		1372 to 1374, 1382, 1384	139, 140
Hastings, Minn	Gillett		1445½	145, 146
Hastings, Minn	Meyer		1473	148
St. Paul	McConville		1487, 1507, 1518, 1519	150, 152, 153
St. Paul	Krieger	For last 8 years means 4 yards goods. Before that I understood it meant Lawrence LL, having handled no other. Don't know what trade understood. After that, came in contact with other LL, and found LL meant grade, and words Beaverdam Lawrence, etc., meant maker	1547, 1548, 1549, 1569 to 1574	155, 157

Minneapolis	Simpson			159, 160
Minneapolis	Muer			160
Chicago	McKendrick		1702	172
Chicago	Glock		2186	214
New York	Hobart		2366	231
New York	Lincoln		2382, 2384	233
New York	Clifton		82	268
New York	Coburn		126, 190	272, 276
New York	E. P. Smith		253	281
Pittsburg	Stephenson		391	294
Generally	Sheldon's Publications			303, 304
Evansville	Morgan		485, 493	306
Evansville	Keck		821	246
Evansville	Byram		944, 965	250, 252
Generally	Hubbs		561, 579	312, 314
St. Louis	Dodd		626, 627, 629, 632	319, 320
Evansville	Kuhn		584, 585, 588	314, 315
St. Louis	A. R. Smith		657	323
St. Louis	Buchanan		663 to 691	324, 327
St. Louis	Day		716, 719, 742	330, 332
St. Louis	Boogher		757, 767, 771	334, 335
Indianapolis	Erwin		1001, 1025	341, 344
Cincinnati	Stimson		1055	348
Cincinnati	Specher		1087	353
Nashville	Herman		213	381
Nashville	Goodwin		234, 235	383
Aurora	Scott		77, 85	393
Aurora	Hobbs (E. S.)	Had this meaning for 6 or 8 years. Has been so generally and long a time so used that it is so understood	161, 162, 164, 196, 215, 248, 249	401, 402, 404, 406, 409
Aurora	George		298	414

TABLE VI.—LL STAMPED ON SHEETING WEIGHING 4 YARDS TO THE POUND DESIGNATES GRADE—Continued.

PLACE.	WITNESS.	REMARKS.	QUESTION.	TRANS. PAGE.
Generally	Hobbs (R. M.)		326, 361	417, 420
Aurora	Wilcox	So understood for 12 to 15 years	436, 468, 488, 492	427, 429, 430
Chicago	Wilson		640, 677, 678	439, 443
Chicago	Curtis		712	448

Total, 49 witnesses from 18 different leading cities. Of these 49 witnesses, the first 22 were called by complainant.

COMPLAINANT USED LETTERS TO DENOTE GRADE AND ITS NAME AND A BULL'S HEAD AS TRADE-MARK

Before complainant used "LL" on its four-yard goods—which it first did in 1867 (*Trans.*, 46)—it was a well-known manufacturing company; and constantly before said use and since, has stamped the words "Lawrence Mills," by which name it is generally known, upon these four-yard sheetings and other goods of its manufacture. (*Trans.*, 2, 46, 56, 170, 171, 303, 304.)

For many years complainant stamped upon its four-yard sheetings, and other of its sheetings of the kind called firsts, as distinguished from defective pieces, and called seconds, a picture of a bull; and for the last few years has stamped upon such sheeting the picture of a bull's head. (*Trans.*, 2, 301.)

It makes other goods—flannels and denims—and uses upon them a picture of a bull's head similar to that used on the four-yard sheeting. (*See Exhibits and Trans.*, 301.)

Complainant makes two other kinds of brown sheeting, graded according to weight, and stamps one "XX" and the other "XXX" to denote the difference in weight. (*Trans.*, 302, 303.)

Complainant, through its authorized selling

agents, has for many years advertised in Sheldon's Pamphlets, a well-known *dry goods* advertising periodical, heading its advertisement with the picture of a bull's head and the words "Lawrence Mill," and then following are the letters "XX," "XXX," "LL." (*Trans.*, 454, 455.)

The bull's head is understood by the trade to be complainant's trade-mark. (*See Table VII., pages* 23, 24, 25.)

TABLE VII.—BULL'S HEAD IS LAWRENCE TRADE-MARK.

PLACE.	WITNESS.	SUMMARY.	QUESTION.	TRANS. PAGE.
Lowell, Mass	Kilburn	(Complainant's agent.) We brand our regular LL with words Lawrence Co. and the Bull's Head	44	17
New York	C. S. Smith	(Formerly complainant's agent.) Corporate title is Lawrence Manufacturing Company, but spoken of as Lawrence Mills. Bull rampant or bull's head always on the standard LL sheeting	462, 463	56
		To question as to trade-mark witness answered, "When you say trade-mark, you mean the bull."	465	56
St. Joseph	Sanders	The Lawrence trade-mark is picture of a bull's head	972	98
Omaha	Houghton	Handled Lawrence LL 11 years. Only understand LL means Lawrence LL when taken in connection with brand of bull's head and words Lawrence Mills	1100	110
Red Wing, Minn	Boxrud	Lawrence branded always with trade-mark of bull or bull's head, the words Lawrence Mills Sheeting, and letters LL	1328	134
Chicago	Hill	Letters, signs, and symbols used as designating marks, marks indicating value, etc. The Lawrence Company has the bull's head, but it does not, with the Lawrence, indicate the grades The letters LL indicate the grade	1675 to 1679	170
Chicago	Campbell	Never saw any that pretended to be the Lawrence Manufacturing Co. that did not have the bull or bull's head	1859	186
Chicago	Lurie	Was shown Ex. No. 1 (Lawrence LL with bull		

TABLE VII.—BULL'S HEAD IS LAWRENCE TRADE-MARK—Continued.

PLACE.	WITNESS.	SUMMARY.	QUESTION.	TRANS. PAGE.
		rampant) and did not recognize it as genuine, but when shown Ex. No. 2 with bull's head did recognize it as Lawrence LL	1956, 1959	194, 195
Chicago	Teague	To question, "What is stamped on goods that makes you know that [it is made by Lawrence Manufacturing Co.]?" *Ans.*—"There is a heading of a bull's head. Lawrence LL. Lawrence Mills Sheeting is the stamp I recognize it by."	2026	202
Chicago	Spengler	Did not recognize Ex. No. 1 as Lawrence, but Ex. 2 which has the bull's head	2108, 2114	208, 209
Chicago	Mandl	Recognize the exhibits as Lawrence LL by the words "Lawrence LL" and the bull	2236	219
New York	Milliken	Understand trade-mark of Lawrence 4-yard goods "The Lawrence LL with bull's head prominent on the piece of goods."	338	288
Boston	Sargent	(Complainant's Treasurer.) Changed from bull to bull's head, April, 1883. Use bull's head on firsts of our flannels and denims. (See Sargent exhibits.) To question "Do you stamp bull or bull's head on hosiery?" *Ans.* "We do not use the *mill stamp*. We use a private stamp on our hosiery"	447, 454, 466	300, 301, 302
New York	Coburn		137	272
	Sheldon Exhibits Nos. 458, 682, 730, 787, 887	Advertisement authorized by complainant shows bull's head as trade-mark and letters denoting grade		454
Nashville	Herman	Know Ex. Frankland A was made by Lawrence		

		Manufacturing Co. by the bull's head or trade-mark	168	376
		By trade-mark I refer to the bull's head	169, 170, 176, 180, 211	376, 377, 380
Aurora	Hobbs		340	418
Aurora	Wilcox		450	428

HOW THE SEVERAL "LL" SHEETINGS ARE KNOWN TO AND DESIGNATED BY THE TRADE.

There is no confusion in the trade as to the several "LL" brands, and they are known and designated in the trade by their several names.

The Lawrence sheeting stamped as "LL" is known as "Lawrence LL" and "Shawmut LL" generally in the trade, and so invoiced by the Lawrence Manufacturing Company to the trade; and the other "LL" brands are known in the trade by their respective names, coupled with "LL"—as "Beaverdam LL," etc. (*See Table VIII., pages* 27, 28, *and* 29.)

TABLE VIII.—THE LAWRENCE SHEETING STAMPED AS LL IS KNOWN AS "LAWRENCE LL" AND "SHAWMUT LL" GENERALLY IN THE TRADE, AND SO INVOICED BY THE LAWRENCE MANUFACTURING CO. TO THE TRADE; AND THE OTHER LL BRANDS ARE KNOWN IN THE TRADE BY THEIR RESPECTIVE NAMES, COUPLED WITH LL—AS "BEAVERDAM LL," ETC.

PLACE.	WITNESS.	REMARKS.	QUESTION.	TRANS. PAGE.
Lowell, Mass	Kilburn	Complainant's agent. Invoiced to Lawrence selling agents as "Lawrence LL" and "Shawmut LL," "Lawrence XX," "Lawrence XXX"	54, 55, 82, 83	18, 20
Boston	Thomas	When I want firsts I order "Lawrence LL," and seconds, "Shawmut LL," and my customers order same way	208	33
New York	Smith	Formerly complainant's agent. They are invoiced to me by complainant as "Lawrence LL" and "Shawmut LL"	266, 283, 286½, 288	39, 40, 41
Philadelphia	Doughton		590, 591, 598	67, 68
Sedalia	Meuschke		621, 636, 637	71, 72
Sedalia	Lyons		662	74
Sedalia	Marean		687, 706, 707	77, 79
Kansas City	Chumasero		722, 723, 726, 727	81
Kansas City	Wingate		799, 800 to 803	86, 87
Kansas City	Dayton		863, 868, 887	91, 92, 93
St. Joseph	Sanders		966, 967	97
St. Joseph	Motter		1011, 1012	101
Omaha	Hodd		1042, 1044	104
Omaha	Brown		1060, 1062, 1063	106, 107
Omaha	Houghton		1080, 1081, 1091	109, 110
Council Bluffs	Harkness		1114, 1115	112
Council Bluffs	Eiseman		1130, 1131, 1139, 1141	114

TABLE VIII.—THE LAWRENCE SHEETING STAMPED AS LL IS KNOWN AS LAWRENCE LL, ETC.—Continued.

PLACE.	WITNESS.	REMARKS.	QUESTION.	TRANS. PAGE.
Council Bluffs	Beno			117
Council Bluffs	Cook		1183, 1185	120
Winona	Williams		1214, 1215	124
Winona	Brooks		1265, 1266, 1267	128
Red Wing, Minn	Belanger		1298, 1301	131, 132
Red Wing, Minn	Boxrud		1329, 1336	134, 135
Hastings, Minn	Eyre		1355, 1357, 1358	137, 138
Hastings, Minn	Gillett		1438 to 1442	145
St. Paul	McConville		1499, 1501, 1536½	151, 154
St. Paul	Krieger		1576, 1577	158
Minneapolis	Simpson			159, 160
Minneapolis	Muer			160
Chicago	Hill		1594, 1654, 1689, 1690	161, 168, 171
Chicago	McKendrick		1710	173
Chicago	Pinney		1771, 1772, 1789, 1791	179, 180
Chicago	Jones		1831, 1834	183
Chicago	Taylor		1904, 1905, 1911	190
Chicago	Berkery		2003	200
Chicago	Teague		2026	202
Chicago	Glock		2154	212
Chicago	Mandl		2254, 2259	220
Chicago	Erickson		2269	221
New York	Cooley		2313, 2317	226
New York	Hobart		2367, 2368	231
New York	Clifton		84, 86	268

New York	Coburn		137, 179	272, 275
New York	Smith		258, 262	281, 282
New York	Milliken		337	288
Pittsburg	Stephenson		389, 402	293, 294
Louisville	Carter		420	297
Louisville	Bloom			299
Indianapolis	Erwin		1004, 1025	341, 344
Cincinnati	Inglauer		1090, 1111	354, 356
Nashville	Frankland		5, 68	359, 365
Nashville	Connell		138, 140	373
Nashville	Goodwin		243	385
Aurora	Scott		128	397
Aurora	Wilcox		437	427
Aurora	Hawley		508, 518, 520	433, 434
Aurora	Somarindyck		533	435
Chicago	Wilson		642, 646, 695	439, 445
Chicago	Wilson	Very few order without giving brand	701	446
Chicago	Curtiss		718	448

Total, 59 witnesses from 20 different important business centers. Of these 59 witnesses, the first 41 were called by complainant. Thus, out of 58 called by them, 41 testify as shown.

LL TO TRADE DOES NOT INDICATE ORIGIN, AND THE TRADE UNDERSTAND THAT LAWRENCE LL AND THE OTHER LL GOODS ARE FROM DIFFERENT MANUFACTURERS.

TABLE IX.

COMPLAINANT'S WITNESSES.

PLACE	NAME.	REMARKS.	QUESTION.	TRANS. PAGE.
New York	Page		578, 579	66
Sedalia	Meuschke		636	72
Sedalia	Marean		698	78
Kansas City	Chumasero		736	82
Kansas City	Wingate		799 to 801	86
Kansas City	Dayton		885, 886, 887	93
St. Joseph	Sanders		970	97
Omaha	Houghton		1083 to 1099	109, 110
Council Bluffs	Cook		1184, 1185, 1198	120, 122
Winona	Williams		1229½, 1239, 1240, 1245	125 126 127
Hastings	Gillett		1460	147
Hastings	Myer		1470 to 1473	148
St. Paul	McConville		1518, 1519	152, 153
St Paul	Krieger		1584	158
Minneapolis	Simpson			159, 160
Minneapolis	Muer			160
Chicago	Spengler		2135, 2136	210
Chicago	Glock		2182, 2185	214
Chicago	Mandl		2259	220
Chicago	Erickson		2270	221
New York	Hobart		2367	231
New York	Lincoln		2385, 2390, 2393	233, 234
Chicago	Smith		566 569 570 579 582 599	238 239 240 240 242
Evansville	Keck		824	247

Total, 24 witnesses in all, from 11 different business centers.

DEFENDANT'S WITNESSES.

New York	Clifton		79, 111, 112	267, 270
New York	Coburn		132 134 144 147	272 272 273 273
Baltimore and New York	Smith		256, 257, 301, 315	[286 281, 285,
New York	Milliken		320 329 339	287 888 288

TABLE IX.—LL DOES NOT INDICATE ORIGIN, ETC.—Continued.

DEFENDANT'S WITNESSES—Continued.

PLACE.	NAME.	REMARKS.	QUESTION.	TRANS. PAGE.
Pittsburg	Stephenson		393, 405	294, 295
Louisville	Carter		421, 442	297, 299
Louisville	Bloom			299
Evansville	Hubbs		556	312
Evansville	Kuhn		585	315
St. Louis	Dodd		627	319
St. Louis	Buchanan		664	324
St. Louis	Day		716	330
St. Louis	Boogher		759	334
Indianapolis	Erwin		1000	341
Cincinnati	Iglaner		1091	354
Nashville	Frankland		12, 42	359, 362
Nashville	Lyles		84	366
Nashville	O'Bryan		98, 107	368, 369
Nashville	Porter		128	371
Nashville	Connell		150	374
Nashville	Herman		213	381
Aurora	Hobbs		162	401
Aurora	Scott		128	397
Aurora	George		299	414
Aurora	Hobbs		327	417
Aurora	Wilcox		449	428
Aurora	Hawley		514	433
Aurora	Anning		546	437
Chicago	Wilson		641	439
Chicago	Curtiss		713	448

Total, 30 witnesses from 11 important business centers.

Thus, out of the one hundred witnesses called in the case, fifty-four testify to this effect. No witness testifies to the contrary, except several closely connected in business with complainant as agents, etc., and those merchants who have handled Lawrence LL almost exclusively, and state what "LL," from this experience, means to their minds.

SHAWMUT LL.

Complainant claims that the "LL" is its trade-

mark on four-yard goods, and was so known to the trade, and was a guarantee of excellence, and yet it sold two sheetings, and uniformly billed them to the trade, and they were uniformly known to the trade, as "Lawrence LL" and "Shawmut LL," and the "Shawmut LL" was inferior to the "Lawrence LL," and sold for less money. (*Trans.*, 39, 41, 49, 168.)

ALBANY LL.

Complainant, notwithstanding it claims "LL" as its exclusive trade-mark on four-yard sheetings, stamped, in 1884, for John V. Farwell & Co., of Chicago, 150 bales of its four-yard sheetings with the brand "Albany LL," from a stamp furnished by Farwell & Co. After branding the goods, it returned the stamp to Farwell & Co. (*Trans.*, 301.)

The "Albany LL" was known in the trade six years before the proof was taken in this cause, which was the same year this suit was brought. (*Trans.*, *Q.* 576, *p.* 239.)

Thus, in 1884, four years after "Albany LL" was known in the trade, complainant itself participated in putting it on the market branded "LL," and did not, until two years after that time, assert any right to "LL" against any of the many manufacturers so branding their goods. (*Trans.*, *Q.* 448, *p.* 300; *Q.* 525, *p.* 61.)

And this was done after complainant had felt

competition from others branding their sheetings "LL," and at a time when such competition had been felt for five or six years, and had been formidable for two years. (*Trans.*, *Q.* 404 and 410, *p.* 52.)

The proof made by complainant shows that Farwell & Co. got other mills besides the Lawrence to make "Albany LL." (*Trans.*, *Q.* 594, *p.* 241).

NO CASE OF DECEPTION SHOWN.

This suit was brought in 1886. At that time complainant had felt the competition from other manufacturers branding four-yard sheetings "LL" for seven years (*Trans.*, *Q.* 404 and 410, *p.* 52), and although the foundation of the suit is alleged imitation of trade-mark, and it has examined fifty-eight witnesses from many important business centers, many of whom have handled its "LL" goods and the competing "LL" sheetings, it has not been able to prove a single instance where any buyer was deceived by defendant's or any of the other "LL" brands, and bought the goods so branded thinking it was the "Lawrence LL." While such proof is not essential, and the Court is the judge of the likelihood of deception, yet, in view of the alleged infringement by so many, and extending over such a period of time and extent of territory, the absence of such proof is most significant, and almost conclusive that no such deception existed.

CLAIM LIMITED TO "LL" ON FOUR-YARD GOODS.

Complainant only claims the trade-mark in "LL" on four-yard sheetings, which concedes that defendant might use it on five-yard sheetings. It does not claim that the Atlantic Mills infringe by using it on a five-yard sheeting, but undertakes to save its own case by asserting that the grades are dissimilar, and that, notwithstanding any prior rights the Atlantic Mills may have, it can, by reason of the dissimilarity, have a right to "LL" on four-yard goods. And yet, as shown, if defendant used the "LL" on five-yard goods the casual buyer would as likely mistake the "Cumberland five-yard LL" for the "Lawrence LL" as it would the "Cumberland four-yard LL" for the "Lawrence LL." (*See Table II., pp.* 9 and 10.)

COMPLAINANT DID NOT ADOPT "LL" AS A TRADE-MARK.

There is not a particle of evidence to show that complainant adopted "LL" as a trade-mark. On the contrary, its agent, Smith (*Trans., Q.* 342, *p.* 46), shows that the same goods made by it and branded "L" was being sold by a purchaser of complainant at a less price than complainant could meet. Therefore, to make the public think the goods were different, it branded its new output "LL" so as to avoid this competition. It originated in a fraud and falsehood, misrepresenting these goods as different from its previous make, and indicating by

the "LL" a superiority over the "L." At that time it was already using the words "Lawrence Mills" and the picture of a bull's head. There is no evidence showing that it ever in any way claimed it as a trade-mark until about the time these suits were brought, and then it began to put a caution label on the goods, claiming "LL" as a trade-mark. (*Trans.*, *Q.* 448, *p.* 300.)

This manifestly was done to influence the minds of witnesses and make testimony, as is plain from the testimony of Glock, wherein this label was first brought to light. (*Trans.*, *p.* 213.)

"LL" ADOPTED BY DEFENDANT.

When defendant branded "LL" it did not know that complainant claimed a trade-mark right in them. (*Trans.*, *Q.* 295, *p.* 391.)

It was familiar with other "LL" brands. (*Trans.*, *Q.* 296, *p.* 391.)

At that time "LL" in the trade meant four-yard goods. (*See Table V.*, *p.* 16, *and Table VI.*, *p.* 18.)

It had no purpose of simulating complainant's brand. (*Trans.*, *Q.* 236, *p.* 384.)

It adopted "LL" to indicate to the trade that its goods were four-yard sheetings. (*Trans.*, *Q.* 234, *p.* 283.)

FINDINGS OF FACT BY THE CIRCUIT JUDGE.

From the evidence in this case the Circuit Judge found the following to be facts:

First.—Prior to 1867 complainant used as its brand on four-yard sheetings a picture of a bull in a rampant position in connection with the words "Lawrence Mills," the name by which the Lawrence Manufacturing Company is commonly known, with the single capital letter "L." (*Trans., p.* 467.)

Second.—In 1867 complainant made the addition of another capital letter "L," forming the "LL." When this change was made complainant was a well-known manufacturing company. (*Trans., pp.* 467, 468.)

Third.—In 1883 it substituted for the bull rampant the bull's head in connection with the words "Lawrence Mills sheetings" and the letters "LL." (*Trans., p.* 468.)

Fourth.—Contemporaneously with its employment of the letters "LL" on its third-class goods of first quality it put into the trade a brown cotton sheeting, of same weight as that stamped with the bull rampant and words "Lawrence Mills" and "LL," which it branded "Shawmut LL Sheeting," and which, on account of imperfections or defects, was inferior and of less value than the former, and these sheetings have been put on the market continuously since 1867. (*Trans., p.* 468.)

Fifth.—Complainant makes two other kinds of brown sheeting, graded according to weight, and stamps one "XX" and the other "XXX" to denote distinction in grade. (*Trans.*, *p.* 468.)

Sixth.—Through its authorized selling agents complainant has for many years advertised its sheetings in *Sheldon's Pamphlets*, a well-known dry-goods advertising periodical, heading its advertisement with the picture of a bull's head, the words "Lawrence Mills," and then following are the letters "XX," "XXX," "LL." Complainant makes other goods, on which it uses the picture of a bull's head and the words "Lawrence Mills," similar to that used on the four-yard sheeting, but not the letters "LL." (*Trans.*, *p.* 468.)

Seventh.—Letters of the alphabet have for many years been used by manufacturers to designate grades and qualities of goods, and almost the entire alphabet is so used; so that it is understood generally in the cotton goods trade that letters are thus used to designate grade, class, or quality. (*Trans.*, *p.* 468.)

Eighth.—It is generally understood in the trade that "LL," as stamped on the complainant's sheetings, means four-yard goods, and the words "Lawrence Mills," in connection with the bull's head, are used to indicate the maker. (*Trans.*, *p.* 468.)

Ninth.—These goods are always invoiced by complainant as "Lawrence" or "Lawrence Mills LL," and they are thus generally known in the trade, ex-

cept in some instances persons who have been familiar with them or have handled them exclusively call them simply "LL's," thereby meaning the sheetings made by the Lawrence Company; but generally said sheetings are described as "Lawrence LL," or "Lawrence Mills LL," just as other brands of sheetings stamped with "LL" are generally known in the trade and spoken of as "Beaverdam LL," "Badger State LL," "Aurora LL," "Cumberland LL," etc. (*Trans., pp.* 468–9.)

Tenth.—The signification of the letters "LL" stamped upon cotton sheeting, as indicative of grade, was generally understood in the trade when defendant commenced the use of said letters in 1885. (*Trans., p.* 469.)

Eleventh.—The facts are clearly established that the Atlantic Mills, of Lawrence, Mass., stamped the letters "LL" upon brown sheetings of its manufacture in the years 1860, 1862, 1864, 1865, and from 1872 down to the present time. There were cessations (or "interregnums," as the witness J. C. Bowker calls it) in the manufacture of said goods by the Atlantic Mills from time to time between 1860 and 1865 and between 1865 and 1872, none being thus stamped between the latter dates. The weight of the Atlantic goods made in 1860, and stamped with the letters "LL," was 4.19 yards to the pound; in 1862 the goods so stamped weighed 4.36 yards to the pound, and in 1863 and 1864–5 their weight was 4.56 yards to the pound. In 1872, when the Atlantic Mills again commenced

placing the "LL" on its sheetings, they weighed, and have since continued to weigh, five yards to the pound. It further appears that said Atlantic Mills, in 1860, made a grade of brown sheeting that weighed 3.89 yards to the pound, and which it stamped with a single "L." The Atlantic Mills employed said letters to distinguish different grades of goods, and has continued to use letters for that purpose. (*Trans.*, *p.* 469.)

Twelfth.—It is fairly deducible from the evidence that the Atlantic "LL" cotton sheetings were in the market in 1867, when complainant first commenced using said letters on its third-class sheetings. (*Trans.*, *p.* 469.)

Thirteenth.—Said Atlantic goods are and were of the same general character and class as those upon which complainant stamps "LL," and are so near alike in appearance to the "Lawrence LL" that ordinary buyers, and even experts, cannot, by looking at them, distinguish them from each other. They are both used for the same general purposes, and compete with each other. Looking only at the letters "LL" purchasers would as readily mistake the inferior "LL" sheeting of complainant for its "firsts" or regular "Lawrence LL" sheeting as they would the defendant's "Cumberland LL" goods. (*Trans.*, *pp.* 469, 470.)

Fourteenth.—John B. Farwell & Co. have for the past six or seven years been using a private brand for sheeting known in the trade as "Albany LL," and in 1884, with full knowledge of this fact, com-

plainant stamped for said Farwell & Co. four-yard sheetings with the label "Albany LL," and returned the stamp with the goods to Farwell & Co. (*Trans.*, *p.* 470.)

Fifteenth.—The evidence shows that complainant has all the while known of the "Atlantic Mills" using the "LL" on its goods; that for more than six years before the commencement of this suit it has been aware of the fact that numerous other manufacturers were stamping said letters on their four-yard cotton sheeting, and that it never objected until about the time of bringing this suit and one of like character against the Aurora Cotton Mills at Chicago. (*Trans.*, *p.* 470.)

Sixteenth.—It is not shown that the brand of defendant has ever been mistaken for that of the complainant. (*Trans.*, *p.* 470.)

Seventeenth.—There is no direct evidence that complainant, when it commenced using the "LL" letters on its third-class goods, adopted them for the purpose of making them its trade-mark, or any substantial or material part thereof. It does not appear that the single "L" used prior to 1867 constituted, in whole or in part, its trade-mark. It is perfectly clear, from the account which complainant's agent, Smith, gives of the change from the single "L" to the double "LL," made in 1867, that the purpose and design in adopting the latter was not to indicate origin or ownership, or to distinguish the sheetings on which said letters were stamped from similar goods manufactured by oth-

ers, but that its primary object was to denote its class, quality, or grade, and to represent it to the public as being different goods in class and quality from those primarily sold by complainant under the single "L" stamp. The change to the double "LL" was not made to distinguish complainant's four-yard sheetings from similar goods manufactured by others, but to prevent identification with its own goods of the same grade, class, and quality previously sold, and which the purchaser was using in competition with it. (*Trans.*, *pp.* 470–472.)

BRIEF.

I.

To entitle a person to the exclusive use of a mark or device as a trade-mark, it must appear that its purpose is to identify the maker with the articles—that is, it must point distinctively, either by itself or by association, to the origin or ownership of the article to which it is affixed; and if it appear that the mark consisted of letters or figures, and was placed upon the article for the purpose of indicating its grade or quality, it cannot be upheld as a trade-mark.

Amoskeag Manufacturing Co. v. Spear, 2 Sanford, S. C., 599; Cox's Trade-mark Cases, 87.
Amoskeag Manufacturing Co. v Trainer, 11 Otto, 51.
Goodyear v. Goodyear, 128 U. S., 599.
Canal Co. v. Clark, 13 Wallace, 311.
Candee v. Deere, 54 Ill., 434.
Avery v. Meikle, 81 Ky., 97.
Stokes v. Landgraff, 17 Barb., 608; Cox's Trade-mark Cases, 137.
Falkinburg v. Lucy, 35 Cal., 52; Cox's Trade-mark Cases, 448.
Burton v. Stratton, 12 Fed. Rep., 696.
Raggett v. Friedlater, L. R., 17 Eq., 29.
McLean v. Fleming, 6 Otto, 245.
Marshall v. Pinkham, 52 Wis., 572; 38 Am. Rep., 756.

II.

The claimant must have been the first one to use the mark on same or like articles.

Stachelberg v. Ponce, 128 U. S., 690.
Canal Co. v. Clark, 13 Wallace, 311.
American Solid Leather Button Co. v. Anthony, Atl. Rep., Vol. 5, p. 628.

Avery v. Meikle, 81 Ky., 97.
Falkinburg v. Lucy, 35 Cal., 52; Cox's Trade-mark Cases, 459.
Derringer v. Plate, 29 Cal., 292; Cox's Trade-mark Cases, 327.

III.

Where imitation or infringement are charged, such imitation, to be restrained, must amount to a false representation, expressed or implied. A court of equity will not interfere where there is no evidence of fraud or deceitful representations. The courts are not bound to interfere where ordinary attention will enable a purchaser to discriminate.

McLean v. Fleming, 6 Otto, 255.
Canal Co. v. Clark, 13 Wallace, 322.
High on Injunctions, Secs. 1085, 1086, and 1089.
Merrimac Manufacturing Co. v. Garner, 4 E. D. Smith, 387; Cox's Trade-mark Cases, 161.
Partridge v. Menck, Cox's Trade-mark Cases, 72–81.
Colloday v. Baird, Cox's Trade-mark Cases, 257–261.
Boardman v. Merriden Co., Cox, p. 503.
Popham v. Cole, 66 N. Y, 69; 23 Am. Rep., 22.
Morgan v. Trowell, 69 N. Y., 292; 42 Am. Rep, 296.
Amoskeag Manufacturing Co v. Trainer, 11 Otto, 51.
Goodyear v. Goodyear, 128 U. S., 604

IV.

The owner of a valid trade-mark who acquiesces in its use by others who had no intention to defraud, cannot have an account of gains and profits.

Browne on Trade-marks, 503.
Burton v. Stratton, 12 Fed. Rep., 696.
Amoskeag Manufacturing Co. v. Garner, 55 Barb.; Cox., pp. 541–552.
Beard v. Turner, Cox, p. 717.
Taylor v. Carpenter, Cox, p. 41.
Harrison v. Taylor, Cox, p. 675.
McLean v. Fleming, 6 Otto, 245.

V.

If the owner of a valid trade-mark acquiesces in its use by other manufacturers to designate a particular grade of goods under a classification generally used by the public, and such use has been so general and so long that the trade generally has come to understand that such mark is used only to express grade with no reference to origin, and has with such meaning incorporated such mark into the language of trade, the owner cannot after that set up an exclusive right to use such mark upon such grade of goods, and is estopped by such unchallenged public user, which amounts to a dedication on his part.

ARGUMENT.

The propositions will be discussed in the order followed in the Brief.

I.

The authorities cited sustain the principle that the essential quality of a trade-mark is its office of indicating the origin of the article upon which it is placed. It is conceded that this characteristic may be acquired in time by association, and that the trade-mark need not of itself be sufficiently declarative to clearly indicate the maker. If the maker of the goods be otherwise distinctly indicated, and the device in which a trade-mark right is claimed, consists of letters, and they were adopted to designate the class of the particular product, the fact that association with the portions of a brand which embody the name of the maker or his trade-mark, has given such *grade*-mark notoriety in connection with the name or trade-mark, could never convert such *grade*-mark into a trade-mark or a component part of one. The uncontroverted proof in this case shows that the complainant, before it used the letters "LL" on its four-yard sheetings, was a well-known manufacturer, and that then upon this very goods it impressed, as it does now, its name and the device of a bull. (*Ante, p.* 21.) These features, which undoubtedly con-

stituted its trade name and mark (*ante*, *p.* 23), clearly disclosed the origin of the goods. It also impressed on the goods a letter "L" before it began using the "LL," and upon similar goods of different classes it used "X," "XX," and "XXX." (*Ante*, *p.* 21.)

As shown by its own agent, it began to put "LL" on the goods formerly branded "L" for the purpose of overcoming competition with these identical goods made by it, and sold in the trade with the brand "Lawrence Mills L" and the vignette of the bull. (*Trans.*, *Q.* 342, *p.* 46.) The name and vignette of the complainant was upon both goods, and the only office that "LL" could perform, was to indicate to the trade (though falsely), that the goods so branded were of a different grade or class from the identical goods branded with the single "L." Advantage was taken of the well-known fact that letters were accepted by the trade as expressing class or grade, the duplication denoting the higher grade. Thus it is clear that complainant never adopted it as a trade-mark, but only to designate grade.

At that time, and ever since, the public has understood that letters were used generally by manufacturers to designate class or quality. (*Ante*, *p.* 13.) The case of *Amoskeag Manufacturing Company* v. *Spear*, 2 Sanford S. C., 599, holding that letters, when adopted to denote grade, could not ripen into a trade-mark, had been decided and promulgated eighteen years before that time.

Shortly after the Lawrence put "LL" on brown sheeting weighing four yards to the pound, other makers began to put these letters on their four-yard sheetings, to denote this grade. Before this suit was brought seventeen different brands with "LL" on four-yard sheetings had been known in the trade from two to fifteen years, and sixteen of them had been so known for more than five years. (*Ante*, *p.* 17.)

Complainant, without a protest, assertion of right, or suit, stood by and saw, year by year, manufacturer after manufacturer begin to use these letters, in connection with their brands, upon these sheetings, until forty-eight such brands besides its own were in the market. (*Ante*, *p.* 15.) It saw the trade all over the land educated to understand that "LL" on such sheetings meant four-yard goods, irrespective of maker, and waited until this education was general and well-nigh universal in this country. (*Ante*, *Table VI.*, *pp.* 18, 19, 20.) It not only acquiesced, but actively assisted, in the work, by putting on the market a four-yard sheeting branded "Shawmut LL," unaccompanied by its trade name and well-known vignette (*ante*, *p.* 32), and by branding its four-yard sheeting for Farwell & Co. with "LL," associated with the word "Albany," using therefor the private brand of Farwell, and returning it to him for use by other manufacturers as it had been so previously used. (*Ante*, *p.* 32.)

Now, notwithstanding these facts, and merely on

the strength of the fact that these letters have become well known to its customers in connection with its name and vignette, and are suggestive to some of them of the name of Lawrence, complainant asks a court of equity to make it sole heir and universal legatee, of all the trade in four-yard sheetings branded "LL" which has been built up through so many years by so many manufacturers. It wants a monopoly of a trade which it alleges in its bill to be very valuable, by appropriating to its exclusive use a term which is public property, as was attempted in vain in *Canal Co.* v. *Clark*, 13 Wallace, 311; *Goodyear* v. *Goodyear*, 128 U. S., 603; and *Stachelberg* v. *Ponce*, 128 U. S., 690.

This case clearly falls within the rule announced by this Court in *Manufacturing Co.* v. *Trainer*, 101 U. S., 51, 55, that "letters or figures which, by the custom of traders or the declaration of the manufacturer of the goods to which they are attached are only used to denote quality, are incapable of exclusive appropriation, but are open to use by any one, like the adjectives of the language."

The two cases are alike in every material point emphasized by the Court in the Trainer case.

Each had a label with its name and other features, which was used on other grades of goods of its manufacture, besides the one in controversy, accompanied by other letters. In both cases the letters claimed were first used with this label long

after the company and its label had become well known. They were, in both instances, added to the label to designate a different grade from that hitherto produced, except that in the Lawrence case the representation in this respect was, in reality, false, though the letters were used with the confessed purpose of representing that the grade was different. In both cases the history of the adoption of the letters shows that they were used merely to denote grade.

The device previously and subsequently used in both cases stated the name of the manufacturer, and no purpose could have been served by any further declaration of that fact.

The letters of themselves suggested nothing, and, when explained, showed that they were placed in the device of the company when affixed to a finer quality of goods, while single letters were used upon those of an inferior quality. They are never used in either case by themselves, but merely as a part of a device containing other features and printed terms.

So far the cases touch at every point dwelt upon by this Court in its analysis of the facts in the Trainer case. (101 *U. S.*, 55.)

To this case is superadded the fact that the commercial world generally understands that "LL" is used merely to denote the grade known as four-

yard sheetings, and this makes the claim in this case weaker by that much than was the claim in the Trainer case, and seems to be conclusive against it.

It differs from *Menendez* v. *Holt* (128 U. S., 519) even wider than that case differed from the Trainer case.

"La Favorita" was merely a fancy name, and in a foreign language. Although it was used to designate quality, it did not stand in the same category as letters and figures, which the commercial world, by general consent, uses to denote grade.

This term had not acquired in the trade the significance of a certain grade of flour fixed by an invariable standard, such as weight. It is not shown that flour was graded in any way upon a classification accepted generally by the trade, as is shown in the case of sheeting. The facts only show that "La Favorita" indicated a certain quality determined by Holt & Co., according to their standards of selection and judgment. If the words had merely been used to denote that each package contained a certain number of pounds, and if it had been shown that they were understood generally to indicate that fact only, and that they had been used for that purpose for many years by many manufacturers, then the case would have been like that of "La Normandi" in *Stachelberg* v. *Ponce*, 128 U. S., 690.

Complainant is driven by the proof that it adopted "LL" in the first instance to denote grade, and by the overwhelming evidence that these letters have become a commercial expression for four-yard sheetings, to the proposition that while they denote grade they also denote goods of this class made by it. That was the contention in the Trainer case, but the fact of adopting the letters to denote grade precluded their acquiring the additional significance of a trade-mark. The combination must express origin only to be available as a trade-mark.

Caswell v. Davis, 58 N. Y., 223; 17 Am. R., 233.

Complainant doubtless hopes to bring itself within the doctrine stated in *Button Co.* v. *Anthony*, Atl. Rep., Vol. 5, p. 628, as follows: "When the sign or symbol confessedly referred to quality and size of the goods (such as style 830) and had no use in indicating origin until usage connected them in the popular mind with origin, this secondary use gives the property in the symbol, and an injunction will issue for its infringement."

Conceding, for argument, this principle to its full extent (though it is in conflict with the doctrine stated by this Court in the Trainer case, since repeatedly referred to with approbation), it is sufficient to show that it cannot be applied under the facts in this case.

In the Trainer case (101 U. S., 55) the Court

says: "There is in the record the testimony of several witnesses to the fact that they understood that the letters were intended to indicate the origin as well as the quality of the goods to which they were attached, but it is entirely overborne by the patent fact that the label previously disclosed the name in full of the manufacturer, and by the history of the adoption of the letters as narrated by the complainant." This statement is literally true in this case. Several witnesses who sold complainant's goods testified that to them "LL" indicated goods made by complainant, but the overwhelming proof was to the effect that "LL," instead of, by association, acquiring in the trade, in addition to its grade significance, one of origin, has become fixed generally as a trade term for grade alone. (*Ante, pp.* 18, 19, *and* 20.)

So far from developing from a grade-mark into a trade-mark in the popular mind, the letters have become the best known and most generally accepted expression for grade in use in this country.

In *Burton* v. *Stratton*, 12 F. R., 696, it is said: "But if the primary use be to indicate the origin or ownership, the mere fact that the article has obtained such a wide sale that the mark has also become indicative of quality is not, of itself, sufficient to debar the owner of protection or make it the common property of the trade." Complainant takes comfort from this, but fails to note that it is the very reverse of its claim, for it seeks to show

that it has gained a trade-mark by a *grade*-mark becoming widely known, and not that it has not lost what was originally a trade-mark by its general acceptance as a *grade*-mark.

The following decisions have been relied on by complainant, but they differ essentially from this case in the controlling facts:

Lawrence Manufacturing Co. v. *Lowell H. Mills*, 129 Mass., 325; 37 Am. Rep., 362.

This case was distinguished from the Trainer case (and is as clearly distinguishable from this case) on the grounds that "*the plaintiff adopted and used the numerals* 523 *as parts of its trade-mark;* * * * that they were of unusal and distinctive form; that they were added to the original device, consisting of the eagle, the wreath, and the plaintiff's name, at the time when the word 'trade-mark' was also added; and that the whole, so composed, has been used as one trade-mark ever since; * * * and that defendant used 'the same figures *printed in the same style.*'" It will be observed that the Court laid stress on the fact that the statute of Massachusetts expressly gave a trade-mark right in letters and figures.

In the case of *Shaw Stocking Co.* v. *Mack*, 12 F. R., 707, in which the trade-mark right in "Style 830" was upheld, the Court placed its decision mainly on the fact that "the complainant through its officers, explicitly states that the figures were

adopted to distinguish its wares from those of other manufacturers."

The only proof in the record on the question of the adoption of "LL" by complainant shows that they were used not to distinguish their goods from those of others, but to distinguish these goods from like goods made by them—in short, to express grade alone. (*Trans.*, *Q.* 342, *p.* 46.)

In the Shaw case the Court says further: "It was the intention of the complainant to have its goods known in the market by these numerals. They were, in reality, so known."

The proof in our case is that complainant always invoiced them as "Lawrence LL," and not as "LL," and that they had an inferior and cheaper brand of same weight which it invoiced as "Shawmut LL," and that they were so advertised and known in the trade. (*Ante*, *p.* 26.) And the other "LL" brands are known by the addition of their respective names.

As stated by the Chancellor who decided the case of *Avery* v. *Meikle*, 37 Am. Rep., 366: "It is true that in *Gillott* v. *Esterbrook*, 48 N. Y., 374, the numeral 303 was held to be a valid trade-mark, and in *Boardman* v. *Britannia Co.*, 35 Conn., 402, No. 2340 was upheld to be a valid trade-mark, but in both cases the ground upon which these numerals were sustained was, they were arbitrary signs;

that they did not express size, quality, or quantity." In the Gillott case the fact was expressly found that the claimant "selected the device '303' as a trade-mark for a pattern of pen manufactured by him." This conclusion distinguishes it absolutely from the Trainer case. Otherwise the two cases would be wholly irreconcilable.

In all of these cases, besides the use of the figures, there was palpable imitation of them in size and shape, and the general features of the brand were deceptive in appearance (all of which is not so in this case); and these facts manifestly had great weight in the decisions.

H.

The claimant must have been the first one to use the mark on same or like articles. (*See authorities in Brief.*)

Complainant cannot gain an exclusive right to use "LL" on cotton sheetings weighing four yards to the pound, because when it adopted the letters on that cloth there was being sold in the trade a cotton sheeting which had been made by the Atlantic Mills, and stamped with the "LL" in blue solid block letters exactly like those used by complainant, and the two goods were so near alike as to be indistinguishable by the ordinary purchaser, and even by experts.

These Atlantic sheetings were so stamped from 1860 to 1865, with intermissions, and have been so stamped ever since 1872. (*Ante, p.* 4.) The goods were out in the market, and were generally known in the trade from 1860 to the time of bringing this suit. A number of witnesses testify to having known them in the trade fifteen and twenty years before this suit was brought, which shows conclusively that in various places the goods so branded were in the trade in 1867, when complainant first began to use these letters. (*Ante, pp.* 6 *and* 7.)

These goods competed then, and now compete, with complainant's, and are so much alike that they cannot, by mere sight, be distinguished. (*Ante, pp.* 9, 10, *and* 11.) A practical test is worth more than assertion or argument. Complainant introduced a merchant of Chicago—Lurie by name —to prove that "LL" meant Lawrence sheeting. On cross-examination the following took place:

"*Cross-ques.* 1968.—I now show you Exhibit No. 2, folded partially. What do you see upon it?

"*Ans.*—Lawrence Mills sheetings 'LL.'

"*Cross-ques.* 1969.—Would you recognize that alone as indicating to you that the goods on which it is branded is Lawrence 'LL' sheeting?

"*Ans.*—Yes, sir.

"*Cross-ques.* 1970.—I now show you Exhibit 2. What do you see upon it?

"*Ans.*—Sheetings 'LL.'

"*Cross-ques.* 1971.—Would you recognize that alone as indicating to you that the goods on which it was branded was Lawrence 'LL' sheeting?

"*Ans.*—Yes, sir.

"*Cross-ques.* 1972—Why? Because it has 'LL' on it?

"*Ans.*—Double 'L.'

"*Cross-ques.* 1973.—What do you see on the brown muslin here shown you?

"*Ans.*—Double 'L' or 'LL.'

"*Cross-ques.* 1974.—Look at that and say whether you would recognize it as indicating that this goods was made by the Lawrence Mills.

"*Ans.*—Yes, sir.

"*Cross-ques.* 1975.—That is your interpretation of it?

"*Ans.*—Yes, sir.

"*Cross-ques.* 1976.—What distance are you from it?

"*Ans.*—If I see double 'L,' I think it is the brand that I always buy.

"*Cross-ques.* 1977.—What distance are you from this piece of muslin? How far are you off from it?

"*Ans.*—About four feet.

"*Cross-ques.* 1978.—I now hold in my left hand another piece of muslin. What do you see on that?

"*Ans.*—I see two 'L's' on it.

"*Cross-ques.* 1979.—Is there any difference in the size of the 'L's.'

"*Ans.*—It is.

"*Cross-ques.* 1980.—They are both the same distance from you, are they not?

"*Ans.*—Yes, sir.

"*Cross-ques.* 1981—Could you tell whether either one of them or both of them is of the Lawrence make from where you are sitting?

"*Ans.*—Yes, sir; I can.

"*Cross-ques.* 1982.—How can you tell?

"*Ans.*—By the letters.

"*Cross-ques.* 1983.—You cannot tell by the texture of the goods, can you?

"*Ans.*—I think I can.

"*Cross-ques.* 1984.—How many yards to the pound is the goods which I hold in my right-hand, and how many yards to the pound is the goods which I hold in my left-hand?

"*Ans.*—I never weighed yard muslin, and I always depend on the wholesale man that sold me the goods.

"*Cross-ques.* 1985.—To what grade of sheeting does this which I hold in my left-hand belong?

"*Ans*—To fine muslin.

"*Cross-ques.* 1986.—And what grade does that which I hold in my right-hand belong to?

"*Ans.*—To the coarse.

"*Cross-ques.* 1987.—In your opinion, that in the right-hand, then, is a heavier goods somewhat than that in the left?

"*Ans.*—Yes, sir.

"*Cross-ques.* 1988.—The 'Lawrence' is what is called a coarse brown sheeting is it not?

"*Ans.*—Yes, sir.

"*Cross-ques.* 1989.—Now, which is the 'Lawrence,' that which I hold in my right or that which I hold in my left-hand?

"*Ans.*—That which you hold in your right.

"*Cross-ques.* 1990.—Now, I will unfold that which I have held in my right, and ask you to read what there is printed on it.

"*Ans.*—'Atlantic Mills LL, fine sheetings.'

"*Cross-ques.* 1991.—Now, I will unfold that which I hold in my left-hand, and ask you to state what appears upon it.

"*Ans.*—'Lawrence Mills Sheeting LL,' with the picture of a bull at the top.

"*Cross-ques.* 1992.—Now, looking at these two goods, and at the 'LL' alone, a person could not well tell the difference, could they?

"*Ans.*—No, they could not; I couldn't myself.

"*Cross-ques.* 1993.—That was an honest mistake on your part, giving your judgment to the best of your ability, was it not?

"*Ans.*—Yes, sir.

"*Cross-ques.* 1994.—An ordinary buyer, seeing these two goods folded, showing nothing but the 'LL,' might easily, by merely looking at them and not feeling the difference in texture, take one for the other, might they not?

"*Ans.*—Yes, sir." (*Trans.*, 195–197.)

This makes the claim of complainant to a trademark in "LL" on four-yard sheeting simply ridiculous.

A trade-mark is for the eye. It is a signet, and not a sound. Complainant in its bill only claims it on the four-yard grade. It now says that the Atlantic used it on a five-yard grade, and therefore this prior use does not preclude its claim. It is confronted by the fact that the two grades are not distinguishable by the eye, and therefore the grade must first be ascertained by touch or inquiry to identify its alleged trade-mark. Instead of the trade-mark showing to the world what the goods are, as is the office of a trade-mark, you must, in this case, first find out what the goods are before you know the trade-mark. Instead of the trade-mark guaranteeing the goods, the goods guarantee the trade-mark. Any claim resting on such a shadowy distinction as the difference between four, four and a half, and five yard goods is too attenuated to live. The proof shows that complainant's "LL" goods are as likely to be taken for the Atlantic as defendant's are for those of complainant. (*Trans.*, *q.* 1129, *p.* 113.)

An examination of the exhibits is sufficient on this point.

III.

There is no imitation by defendant. No one using ordinary care will take one for the other. The two brands, in general appearance and in the shape and style of letters, are entirely dissimilar. Unless complainant can maintain a right to a trade-

mark in the sound of "LL," it must fail, for the exhibits show no similarity whatever in appearance. In the Lawrence the letters are solid blue block, and in the Cumberland they are larger and fancy in style. The brands in all other respects have no resemblance whatever.

There is no fraud in simulation, for there is no similarity.

There was no intent to wrong complainant nor deceive the public in adopting the letters.

Letters for many years prior to that time had been understood generally in the trade as signifying grade, class, or quality. (*Ante*, *pp.* 13 *and* 14.)

For many years "LL" had been used by different manufacturers on this particular grade. (*Ante*, *p.* 17.)

These letters had at that time acquired in the trade the fixed meaning of four-yard sheetings without any reference to origin. (*Ante*, *pp.* 17, 18, 19, *and* 20.)

Defendant then used a general *grade*-mark which was public property and a part of trade language, to show that its goods possessed the characteristic which these letters were understood to indicate.

There is no proof impeaching the good faith of defendant, and its reasons for using these letters

are explicitly set forth by its executive officer as follows:

"*Ques.* 232.—For what purpose are letters of the alphabet branded upon cotton goods by manufacturers, and what do they indicate to the trade?

"*Ans.*—For the purpose of distinguishing and designating different grades and weights of goods.

"*Ques.* 233.—State whether or not it is the custom generally of manufacturers of brown cotton goods in the United States to use letters for that purpose; and, if so, to what extent is the alphabet absorbed in this way?

"*Ans.*—It is the general custom, and the alphabet is well-nigh, if not altogether, consumed by said custom.

"*Ques.* 234.—For what purpose did you put 'LL' on your 'Cumberland brown sheetings?'

"*Ans.*—For the purpose of designating it as a four-yard sheeting with a mark generally accepted by the trade as indicating such grade of goods.

"*Ques.* 235.—At that time and now what was the accepted meaning in the trade of the letters 'LL' branded on brown sheeting?

"*Ans.*—The accepted meaning of such a designating mark indicated a four-yard brown cotton.

"*Ques.* 236.—Did you or not have any intention of simulating complainant's brand for the purpose of taking any part of their trade by inducing purchasers to think that they were getting goods made by the Lawrence Manufacturing Company when

buying your goods branded 'Cumberland Sheeting LL.'

"*Ans.*—To the first portion of that question I answer: Not the remotest intention of simulating their brand, nor was there a shadow of thought that any portion of their trade could be diverted thereby; nor was it considered possible that by such means any person whatever could be induced to purchase Cumberland sheeting under the impression that they were buying Lawrence Manufacturing Company's goods. Nothing akin to such a proposition was ever thought of by the Tennessee Manufacturing Company in affixing such a mark to their Cumberland sheeting." (*Trans., p.* 383, 384.)

Not only is there no deception by appearance, but even in sound complainant is safe from injury. The proof establishes overwhelmingly that these several goods are known, not as "LL" sheeting, but by the name of the maker or fancy brand attached. They are in writing and speaking called "Lawrence LL," "Cumberland LL," "Beaverdam LL," etc. (*Ante, pp.* 27, 28, *and* 29.)

It is generally understood that "LL" do not denote any thing but grade and that the several brands are from different makers. (*Ante, pp.* 30 *and* 31.)

There is not a single instance of deception or mistake shown. It is not incumbent on complainant

to make such proof, but it is certain that such proof would have been made if the facts warranted it. Its absence in some cases of alleged infringement might not cause surprise, but in this case, in view of the allegations, it is amazing.

Complainant shows that immense quantities of its goods are sold to jobbers, retailers, and consumers all over the United States, and that for years it has felt the competition of these "LL" brands. It has taken the evidence of fifty witnesses from many important cities for the purpose of showing its injuries, and their experience covered many years and embraced the jobbing and retail trade, and yet not one single case is shown where any other "LL" was bought under the belief that it was "Lawrence LL." It is entirely safe to believe that no such thing ever occurred, and that ordinary attention has enabled purchasers to discriminate. That fulfills the requirements of the law. (*See authorities in Brief, Sec.* III.)

IV.

If complainant be entitled to an injunction, it cannot, on account of its laches, recover damages. It permitted, without protest, suit, or notice, the use of the letters "LL" by many manufacturers for many years. This use was so general that defendant had every right to believe that they were public property. Defendant acted in the utmost good faith and without any intention of trespassing

and without any knowledge of complainant's claim. These facts, independent of all other questions, are sufficient to defeat any claim for an account. (*See authorities in Brief, Sec.* IV.)

V.

If complainant, notwithstanding the use of "LL" by the Atlantic Mills, had a right to acquire a trade-mark in "LL" on four-yard sheetings, yet it is, by its laches, and by its acquiescence in its conversion into a fixed and general trade-term expressive of the single quality of grade, estopped from now asserting an exclusive right. It cannot recover to its private use a symbol that has been incorporated in the language of trade. It helped dedicate it to public use, and cannot now reclaim it.

If "LL" at any time conveyed to any considerable portion of the trade the meaning that the goods on which they were stamped were made by the Lawrence Mills, they lost that significance many years ago, and have now acquired a fixed and generally accepted meaning in the trade of four-yard goods. The proof to this effect is overwhelming. (*Ante, pp.* 15, 16, 17, 18, 19, *and* 20.)

Complainant made no claim to them as a trade-mark—never asserted its right in any way. On the contrary, it advertised in Seldon's Pamphlets with the other "LL" goods. (*See Sheldon Exhibits.*) It branded its goods with "Albany LL,"

which was one of the brands that had been used to affix in the public mind this meaning to "LL," and it did this when it had felt for years competition from four-yard goods of other makers branded "LL." (*Ante*, *p.* 32.)

It would be a wrong to the public to give complainant an exclusive proprietary right to use letters in a way which expresses by such general acceptation a trade classification. Any right may actively or passively be dedicated to the public; a trade-mark right, as well as a right of way in realty. One may become a common right as well as the other, and it may become so by acquiescence as well as by deed. It is only a question of fact, and estoppel is as effectual as a grant.

The principle is stated clearly by the Court in *Burton* v. *Stratton*, 12 Fed. Rep., 696, as follows:

"The only satisfactory rule we have been able to gather from the authorities is that in each case it is a matter for the Court to determine, not alone from the mark itself, but from the testimony, whether the words have become so well known as to stand in the public eye as denoting the character and quality of the article and not its origin or ownership. Thus, if it should appear that the article had been manufactured and sold by a number of dealers under a particular name, this would be decisive that the plaintiff had no right to the exclusive use of that name. Most if not all of these generic names were at first indicative of the

origin; but finally, by constant use, ceased to subserve that purpose, and have become indicative of the quality. An example of this is 'Fowler's Solution of Arsenic,' which clearly indicates origin; but the article, nevertheless, is put up by druggists all over the country, and this name has become public property. We think that most if not all the cases upon this subject, when carefully examined, will be found to have turned upon the extent to which the name is used, rather than the name itself. * * * * * * But if the primary object of the trade-mark be to indicate origin or ownership, the mere fact that the article has obtained such a wide sale that the mark has also become indicative of quality is not of itself sufficient to debar the owner of protection, or make it the common property of the trade. To hold otherwise would be to deprive the owner of the exclusive use of his trade-mark, just at the time when it had become most valuable to him and stood most in need of protection. *But if the same be suffered to come into general use without objection from the original proprietor, it becomes merely generic, or indicative of quality.*"

The last paragraph contains the doctrine we contend for, and it is applicable to the facts of this case.

J. M. Dickinson

Solicitor for appellee

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United States Supreme Court.

OCTOBER TERM, A. D., 1890.

No. 101.

LAWRENCE MANUFACTURING COMPANY,
Appellant,
vs.
TENNESSEE MANUFACTURING COMPANY,
Appellee.
} *IN CHANCERY.*

Brief and Argument for Appellee,

BY

HOPKINS, ALDRICH & THATCHER.

AURORA, ILL.:
J. H. HODDER & Co., Printers, Stationers, Blank Book Makers and Binders,
BEACON Building, on the Island.
1890.

UNITED STATES SUPREME COURT.

October Term, A. D. 1890.

No. 101.

LAWRENCE MANUFACTURING COMPANY, *Appellant,*
vs.
TENNESSEE MANUFACTURING COMPANY, *Appellee.* } In Chancery.

BRIEF AND ARGUMENT FOR APPELLEE.

Appellant seeks, in this case, to enjoin appellee from the use of the letters "LL" on a certain grade or quality of sheetings, manufactured by the Tennessee Manufacturing Company, and claims in its bill that it is entitled to a trade mark on those letters, on the grade of sheetings known in the trade, according to its weight, as four yards to the pound. In its bill, appellant sets out that there are several grades into which cotton sheetings are generally classed, according to weight and quality, one class including the sheetings of such weight that 2.85 yards thereof weigh a pound, another of such weight that three yards thereof weigh a pound, and a third class of such weight that four yards thereof weigh a pound, with the differences which exist, as to excellence, quality, etc., between rival manufacturers of such goods.

It claims the exclusive right to use the letters "LL" on

the grade of sheetings, which, when classed according to its weight, four yards thereof weigh a pound.

Appellant admits that the grade or quality of sheetings upon which it stamps the letters "LL," is manufactured by many other cotton manufacturers in this country, and has been manufactured for many years, and that these other companies have as much right to engage in the manufacture of that grade of sheetings as it has, but claims and insists in its bill that it, *alone*, is entitled to stamp the letters "LL" on that grade of sheeting. Appellee contends that the letters "L L" indicate in the trade four yard sheetings, and when it commenced to manufacture brown sheetings in 1885, it adopted the letters "LL" upon that grade of sheeting because of that recognized fact in the trade.

The preliminary injunction asked for was denied by the court below, and evidence was taken in pursuance of the practice in such cases provided, and the testimony of an hundred witnessess were taken by the respective parties in support of the positions assumed by the parties hereto in the pleadings in this case. The testimony of these witnesses included some of the leading dry goods men engaged in business in all of the larger cities of this country, and also the evidence of retail merchants in various sections of the country, and the purchasers from such retail trade.

This evidence was prepared and a full hearing had in the United States Circuit Court, at Nashville, Tennessee, Judge Howell E. Jackson, presiding. That learned judge gave a patient and intelligent investigation of this case, examining carefully the testimony of all of the witnesses, and the authorities cited on behalf of both of the parties hereto. After mature deliberation, both as to the law and the evidence, he determined that there was no merit in complainant's bill, and on the 7th day of July, 1887, dismissed the same for want of equity. It is from that decision that appellant has brought the case to this court for a review.

We have carefully examined the brief and argument kindly furnished us by counsel for appellant, and discover no point raised that was not fully presented and elaborately argued before the learned circuit judge who decided this case. The authorities upon which they rely in their brief here, are the authorities which they presented before his honor, Judge Jackson, and which were carefully considered by him in the elaborate, learned and able opinion which appears on *pages 465 to 479 of the transcript of the record* in this case.

We shall not attempt to consider this case in the order of the discussion indulged in by counsel for appellant in the brief and argument which they have filed. As it appears to us, the finding of the facts by the circuit judge leaves but very little for discussion in this court. We present these facts as found by the circuit judge:

First. Prior to 1867 complainant used, as its brand on four-yard sheetings, a picture of a bull in a rampant position in connection with the words, "Lawrence Mills," the name by which the Lawrence Manufacturing Company is commonly known, with the single capital letter "L."

Second. In 1867 complainant made the addition of another capital letter "L," forming the "LL." When this change was made, complainant was a well known manufacturing company.

Third. In 1883 it substituted for the bull rampant, the bull's head in connection with the words "Lawrence Mills Sheetings" and the letters "LL."

Fourth. Contemporaneously with its employment of the letters "LL" on its third-class goods of first quality, it put into the trade a brown cotton sheeting, of same weight as that stamped with bull rampant and the words "Lawrence Mills" and "LL," which it branded "Shawmut LL Sheetings," and which on account of imperfections and defects, was inferior and of less value than the former, and these

sheetings have been put on the market continuously since 1867.

Fifth. Complainant makes two other kinds of brown sheetings, graded according to weight, and stamps one "XX," and the other "XXX" to denote distinction in grade.

Sixth. Through its authorized selling agents, complainant has for many years, advertised its sheetings in Sheldon's Pamphlets, a well known dry goods advertising periodical, heading its advertisement with the picture of a bull's head, the words "Lawrence Mills," and then following are the letters "XX," "XXX," "LL." Complainant makes other goods upon which it uses the picture of a bull's head and the words "Lawrence Mills," similar to that used on the four-yard sheeting, but not the letters "LL."

Seventh. Letters of the alphabet have for many years been used by manufacturers to designate grades and qualities of goods, and almost the entire alphabet is so used; so that it is understood generally, in the cotton goods trade, that letters are thus used to designate grade, class or quality.

Eighth. It is generally understood in the trade, that "LL," as stamped on the complainant's sheetings, means four-yard goods and the words "Lawrence Mills" in connection with the bull's head, are used to indicate the maker.

Ninth. These goods are always invoiced by complainant as "Lawrence" or "Lawrence LL," and they are thus generally known in the trade, except in some instances persons who have been familiar with them, or who have handled them exclusively, have called them simply "LL's," thereby meaning the sheetings made by the Lawrence Company; but generally said sheetings are described as "Lawrence LL," or "Lawrence Mills LL," just as other brands of sheetings stamped with "LL" are generally known in the trade,

and spoken of, as "Beaver Dam LL," "Badger State LL," "Aurora LL," "Cumberland LL," etc.

Tenth. The signification of the letters "LL" stamped upon cotton sheetings, as indicative of grade, was generally understood in the trade, when defendant commenced the use of said letters in 1885.

Eleventh. The facts are clearly established that the Atlantic Mills, of Lawrence, Mass., stamped the letters "LL" upon brown sheetings, of its manufacture, in the years 1860, 1862, 1864, 1865 and from 1872 down to the present time. There were cessations (or "interregnums" as the witness, J. C. Bowker, calls it,) in the manufacture of said goods by the Atlantic Mills, from time to time, between 1860 and 1865 and between 1865 and 1872, none being thus stamped between the latter dates. The weight of the Atlantic goods made in 1860, and stamped with the letters "LL" was 4.19 yards to the pound; in 1862 the goods so stamped weighed 4.36 yards to the pound, and in 1863 and 64–5 their weight was 4.56 yards to the pound. In 1872 when the Atlantic Mill again commenced placing the "LL" on its sheetings, they weighed, and have since continued to weigh, five yards to the pound. It further appears that the said Atlantic Mills, in 1860, made a grade of brown sheetings that weighed 3.89 yards to the pound, and which is stamped with the single letter "L." The Atlantic Mills employed said letters to distinguish different grades of goods and has continued to use letters for that purpose.

Twelfth: It is fairly deducible from the evidence that the "Atlantic LL" cotton sheetings were in the market in 1867, when complainant first commenced using said letters on its third-class sheetings.

Thirteenth: Said Atlantic goods were and are of the same general character and class as those upon which complainant stamps "LL," and are so near alike in appearance to the "Lawrence LL" that ordinary buyers, and even

experts, cannot, by looking at them, distinguish them from each other. They are both used for the same general purposes, and compete with each other. Looking only at the letters "LL" purchasers would as readily mistake the inferior "LL" sheeting of complainant for its first or regular "Lawrence LL" sheeting, as they would the defendant's "Cumberland LL" goods.

Fourteenth: John V. Farwell & Co., have, for the past six or seven years, been using a private brand for sheeting, known in the trade as "Albany LL," and in 1884, with full knowledge of this fact, complainant stamped for said Farwell & Co., four-yard sheetings, with the label, "Albany LL," and returned the stamp with the goods to Farwell & Co.

Fifteenth: The evidence shows that complainant has all the while known of the Atlantic Mills using the "LL" on its goods, and that for more than six years before the commencement of this suit, it has been aware of the fact that numerous other manufacturers were stamping said letters on their four-yard cotton sheeting, and that it never objected until about the time of bringing this suit, and one of like character, against the Aurora Cotton Mills, at Chicago.

Sixteenth: It is not shown that the brand of the defendant has ever been taken for that of the complainant.

Seventeenth: There is no direct evidence that complainant, when it commenced using the "LL" letters on its third class goods, adopted them for the purpose of making them its trade mark, or any substantial or material part thereof. It does not appear that the single "L," used prior to 1867, constituted, in whole or in part, its trade mark. It is perfectly clear from the account which complainant's agent, Smith, gives of the change from the single "L" to the double "LL," made in 1867, that the purpose of, and design in adopting the latter was not to indicate origin or ownership, or to distinguish the sheetings on which said let-

ters were stamped from similar goods manufactured by others, but that its primary object was to denote its class, quality, or grade, and to present it to the public as being different goods in class and quality from those primarily sold by complainant under the single "L" stamp. The change to the double "LL" was not made to distinguish complainant's four-yard sheetings from similar goods manufactured by others, but to prevent identification with its own goods of the same grade, class and quality, previously sold, and which the purchaser was using in competition with it.

Those facts, as found by the court, every one of which is fully sustained by the evidence in the record, make a case so strong against the claim of appellant that it is little less than downright presumption upon its part to insist that it has a trade mark in the letters "LL," or has any equity that should be enforced against appellee. If we were to characterize this case as the facts warrant, we should contend that the charge in complainant's bill, in the light of the facts which appear in the record, is a piece of monumental assumption. It is an attempt to get a corner on "LL" sheetings. It is an effort made, after this class of goods has been popularized by 30 or 40 of the western and southwestern cotton mills, to reap the benefit which can be derived therefrom, without any right or justice whatever.

While counsel for appellant have assigned as error the finding of the facts in the court below, they have offered no good reason, either in fact, or in law, for this court to disturb that finding. We take it that the law is well settled, that unless it should be made clear to your honors that grave errors have been committed by the Circuit Court in these facts, which have been found, that you will assume the correctness of the same and look into the law and see whether under those facts the law of the case has been properly applied.

Indeed, in the early history of this court it was held: "If

causes of *equity* or admiralty jurisdiction are removed hither accompanied with a statement of facts, it is well, and the *statement is conclusive as to all facts which it contains.* This is the unanimous opinion of the court. If such causes are removed with a statement of the facts, and also with the evidence, still the statement is *conclusive as to all the facts contained in it.* This is the opinion of the court, but not unanimous."

Wisecart vs. Bauchy, 3 Dallas, page 321.

Counsel for appellant speak with considerable freedom about piracies and the necessity of enforcing commercial honesty. In view of the finding of facts by the court below, such statements come with poor grace from parties representing appellant. The bill which was filed in the court below is predicated on the principal idea that appellant has a trade mark in the letters "LL."

The evidence offered by appellant itself rebuts the idea of any trade mark on those letters under the definition of trade mark as given by this court.

In the case of *Canal Company vs. Clark, 13 Wallace, page 322*, this court, by Mr. Justice Strong said: "The office of a trade mark is to point out distinctively the origin or ownership of the article to which it is affixed, or, in other words, to give notice who was the producer."

The history of the adoption of these letters by appellant, shows conclusively that they were not intended to indicate the origin or ownership of the goods upon which they appear, but were placed there to indicate a certain grade or quality.

It is undisputed that appellant has been a manufacturer of cotton sheetings of various grades and qualities for more than thirty years, and that prior to 1867 it was manufacturing a grade of cotton cloth of four yards to the pound, and had upon it, as its trade mark, a bull rampant, and the words "Lawrence Mills, Sheetings," together with the single

letter "L." The letter "L" indicated the grade or quality of sheeting and was so understood in the trade.

Owing to the fact that one of the customers of the Lawrence Mills, and a purchaser of a large amount of the single "L" sheetings, was selling this grade in the market at a lower price than appellant thought it could manufacture it, a device was resorted to to stop or check at least, the competition in the market that these goods, sold at such depreciated price, was having on the regular out-put of the mills on that grade of sheetings; and hence it adopted a different fold in the goods, and added an additional letter "L." By this device appellant had in the market what purported to be two distinct grades of sheetings, each weighing four yards to the pound. The additional letter "L" indicated that the "LL" grade was a quality superior to that of the single letter "L" grade, and thus appellant was enabled to continue the manufacture of the grade of sheeting known in the market as four-yard sheeting, and still not be injured by the continued sale of its out-put, which was under the control of parties who were selling in the market at this depreciated price.

The circumstances under which appellant adopted the letters "LL" on their four-yard to the pound sheetings, is stated by one of its witnesses, Charles S. Smith, of New York, and is as follows:

"A little time previous to our adopting the LL, we sold them under a single L, and we were induced to change because it was a time when cotton goods were depreciating. We had made considerable sales of the single L; but a party who had bought a large lot was underselling us at a price lower than we could afford to meet; and I suggested that in order to keep them out of this competition, that the Mills should change the fold of the single L from a narrow to a wide fold, and to put on a double L.

"*Q.* 343. Can you designate in what time in 1867 this was first done?

"*A.* Yes, sir; it was done in January or February of that year. The goods came into the market under the LL mark early in February, so that it must have been January that we decided upon it."

Your honors will see, from this testimony, that the letters "LL" were not adopted by appellant to distinguish the grade of sheetings upon which the letters were placed from the like grades produced by other manufacturers of cotton goods, but that the sole and only purpose of appellant in adding another letter "L" was to indicate a superior grade or quality of goods to the single letter "L," and thus keep out any competition in the market with the single letter "L" goods. There was no thought here to establish ownership or origin, *but to designate quality alone.*

In the light of this testimony the case of *Manufacturing Company vs. Trainer, 101 United States Reports, page 51,* is decisive of this case; on page 55 this court, in speaking of that case, say: "It is clear from the history of the adoption of the letters A C A, as narrated by the complainant, and the device within which they were used, that they were only designed to represent the highest quality of ticking which is manufactured by the complainant, not its origin. The device previously and subsequently used stated the name of the manufacturer, and no purpose could have been subserved by any further declaration of that fact. And besides the letters themselves do not signify anything, and require explanation before any meaning can be attached to them. That explanation when made is that they were placed in the device of the company when it is affixed to the finest quality of its goods, while single letters are used within the same device when it is attached to goods of an inferior quality. They are never used by themselves, but merely as a part of a device, containing, in addition to the border in red, several printed terms. Alone the letters convey no meaning; they are only significant as part of the general device constituting the trade mark. Used in that

device to denote only the quality, and so understood, they can be used by others for a similar purpose equally with the words 'superior' or 'superfine,' or other words or letters or figures bearing a like signification."

That case applies with great force to the case at bar. As narrated by the witness for appellant, the device of the letters "LL" was placed on the sheetings only to designate grade and quality, or a better quality than the single letter "L." The device, namely: the bull rampant, and "Lawrence Mills," which were used before the adoption of the letters "LL" contained the name of the manufacturer, and as this court held in the *Trainer case* no additional purpose could have been subserved by any further declaration of that fact. As was well said in the case just quoted, the letters themselves do not suggest anything, and require an explanation before any meaning can be attached to them; and when we come to look for the explanation of those letters, we find, as appears from the evidence of appellant itself, that they were placed on the sheetings to indicate the quality of the goods. They were placed there to indicate to the public that the single letter "L" goods were inferior in quality to the "LL" goods, and that the "LL" was a superior *quality* of four-yard sheeting.

We maintain that the history of the adoption of the letters "LL" by the appellant as narrated by its own witnesses, is decisive of this case, under the authority above quoted. Those letters indicated only quality, and were so intended to denote only quality by the appellant, and they can be used by others for that purpose without any infringement upon the rights of appellant, or without subjecting any cotton manufacturer who should use them to any liability whatever.

In the case of *Canal Company vs. Clark, 13 Wallace, 311*, this court on page 323, said: "No one can claim protection for the exclusive use of a trade mark, or trade name, which would practically give him a monopoly in the sale of

any goods other than those produced or made by himself. If he could, the public would be injured rather than protected, for competition would be destroyed. Nor can a generic name, or a name merely descriptive of an article of trade, of its qualities, ingredients or characteristics, be employed as a trade mark, and the exclusive use of it be entitled to legal protection. As we said in the well considered case of *Amoskeag Manufacturing Company vs. Spear*, 'the owner of an original trade mark has an undoubted right to be protected in the exclusive use of all the marks, forms or symbols that were appropriated as designating the true origin or ownership of the article or fabric to which they are affixed; but he has no right to the exclusive use of any words, letters, signs or symbols, which have no relation to the origin or ownership of the goods, but are only meant to indicate their name or quality.' He has no right to appropriate a sign or a symbol, which, from the nature of the fact it is used to signify, others may employ with equal truth, and therefore have an equal right to employ for the same purpose."

That the claim of appellant that it has a trade mark in the letters "LL," and that they indicate origin and ownership is of recent date, is apparent from the fact that soon after it commenced the manufacture of "Lawrence LL" goods, it placed on the market a grade of goods, known as the "Shawmut LL," and has manufactured continuously from 1867 "Lawrence LL" and "Shawmut LL." The "Lawrence LL" commands a higher and better price, and is regarded in the trade as of superior quality to "Shawmut LL." While "Shawmut LL" is of the same weight, it is of inferior quality to "Lawrence LL," and sells for a less price in the market.

Not only that, but the evidence clearly shows that for many years, J. V. Farwell & Co., one of the great dry goods houses of America, has been using a private brand of its own for four-yard goods, and has had contracts with various

cotton mills of the country, by which it has had that grade of goods manufactured and Stamped "Albany LL," and in in 1884, prior to the organization of appellee's company, and before it placed a yard of its "Cumberland LL" on the market, appellant had manufactured for J. V. Farwell & Co., large quantities of "Albany LL," and thereby placed them on the market in competition with its "Lawrence LL."

(See page of the transcript of record.)

If the letters "LL" indicate origin and ownership, why is it that we find appellant destroying that understanding in the trade by putting in competition with its own goods the "Shawmut LL" and the "Albany LL"? The learned counsel who represent appellant in this court were unable to answer this question in the court below in a manner that was satisfactory to that learned judge, and we apprehend that they will find equal difficulty in giving a reasonable answer to it in this court.

It is contended by counsel that the word "Shawmut" is a limitation upon the letters "LL," and that the "Shawmut LL" has no competition with the "Lawrence LL," and that the public cannot be deceived because of the word "Shawmut," which appears stamped on the goods. If that be true, and the public is not deceived by the large quantities of "Shawmut LL" sheetings that have been placed upon the market and on the trade by appellant, then will not the same public and the same trade understand that the grade "Cumberland LL" differs from the "Lawrence LL." This is equally true of the "Beaver Dam LL" and the "Aurora LL."

Appellant admits that it has placed upon the trade the "Albany LL" at the request of J. V. Farwell & Co., in competition with its "Lawrence LL," and if the word, "Albany," indicates to the trade that it is a different sheeting from the one manufactured by appellant, why will not the word, "Aurora," indicate to the same trade that the

"Aurora LL" is different sheetings from that manufactured by appellant, and why will not the "Cumberland LL" indicate that the sheetings upon which that stamp appears is manufactured by some other company than appellant?

The principles of equity cannot be enforced in this court to oppress or destroy the rights of competing manufacturers. It is only where the complainant comes into court with "clean hands" to restrain his rivals from committing some commercial wrong that the rules of equity can be enforced in his favor. The adoption of the letters "LL" by appellant was conceived in fraud and commercial dishonesty. After selling a large output of its four-yard goods, and after some of its customers had secured a large amount of the same, and were selling at a lower price than appellant thought it could afford to manufacture, on consultation with its Mr. Smith, it adopted a device upon the same grade of goods, by adding the letter "L," by which the public was lead to believe that it was getting a better grade or quality of goods than the previous output of the Lawrence Mills, with the single letter "L" stamped thereon.

As his honor said in the court below: "It may well be doubted whether the claimant of a symbol, or mark, having its origin in such a purpose, can successfully invoke the aid of a court of equity in its protection. It is settled by many authorities that a lack of truth debars a trade mark from protection; that the tale told by the symbol must be sincere, and that the instant it ceases to be truthful in spirit, as well as letter, it becomes an instrument of fraud and is not lawful. In *Ford vs. Foster, L. R., 7 Ch., 611*, it was said: 'According to the rule of *ex turpe causa non oritur actio*, if a trade mark contains a false representation, a representation calculated to mislead the public, a man cannot, by using that which is itself a fraud, obtain an exclusive right, or indeed any right at all.'"

The appellant was so successful in misleading the public into paying a higher price for the double "LL" goods man-

ufactured by it, than was paid for the single "L," that it adopted a further device, using "Shawmut LL" and the "Albany LL." As we have already indicated the principles of equity will not grant to appellant the exclusive privilege of so misleading the public. If it can place upon the market goods known in the trade as "Albany LL" to compete with its own "Lawrence LL," no reason exists in law or in morals for prohibiting other cotton manufacturers from placing in the trade a four-yard sheeting, known as the "Cumberland LL," the "Aurora LL," the "Beaver Dam LL," etc., etc.

In the case of *Manhattan Medicine Company vs. Wood, 108 U. S., page 218*, this court, through Mr. Justice Field, said: "A court of equity will extend no aid to sustain a claim to a trade mark of an article which is put forth with a misrepresentation to the public as to the manufacturer of the article, and as to the place where it is manufactured, both being originally circumstances to guide the purchaser of the medicine."

Appellant here seeks, by a court of equity, to sustain a claim to a trade mark that is admitted to have been put forth under a misrepresentation to the public, and that has been retained and used by the appellant for commercially dishonest purposes.

It was contended in the court below, and we presume the same argument will be advanced here, that while the letters, when first adopted, did not indicate origin or ownership, yet, from long use and the extensive out-put of appellant's mills, the letters "LL" have come to indicate a grade of sheetings manufactured and produced by the Lawrence Manufacturing Company. This is denied by appellee as a fact, and the findings of the court below is against this proposition assumed by counsel for appellant, and the evidence, as appears in the record, clearly supports the finding of the court. But, even if there was evidence in the record which would warrant this conclusion sought to be estab-

lished, we contend that under well known and well established principles of equity, appellant would not be entitled to a trade mark in those letters.

In *Upton, on Trade Marks, page 137*, we find the following: "That although by long continued use of certain words, letters, marks, or symbols, which do not of themselves, and were not designed to indicate the origin and ownership of the goods to which they were affixed, the goods so marked, and because so marked, have become known as those of the manufacturer who first used them, such fact cannot alter the original meaning of the words or symbols, or the intent with which they were first used, as denoting the name of the thing or its general or relative quality, or take from others the right to employ them in the same sense."

The same doctrine is established in the case of *Amoskeag Manufacturing Company vs. Spears, 2 Sandford Chancery, 271; Canal Company vs. Clark, 13 Wallace, 311, and Amoskeag Manufacturing Company vs. Trainer, 101 United States Reports, 51.*

There is no Resemblance in the Trade Mark of the two Companies on the Grade of Sheetings Where the Letters LL Appear.

Appellant's trade mark on its LL sheetings at the time appellee commenced the manufacture of that grade of goods, was a bull's head, immediately underneath that the words "Lawrence Mills,—Sheetings," and following below that the letters "LL." The name of the company, Lawrence Mills, as well as the word "Sheetings" and the letters "LL," are in what is commonly called *block letters.*

Appellee's trade mark has the words "Cumberland Mills," with the figures 4-4 underneath in large ornamental letters, and under that, in large ornamental letters, the further let-

ters "LL." The exhibits accompanying the record in this case show clearly that the most inexperienced observer could not be deceived. The letters LL which appear on appellee's goods have no more resemblance to the letters LL which appear on appellant's goods than E resembles F.

If a trade mark could be established and distinguished by sound alone, then the letters "LL" used by appellee on its four-yard sheeting would resemble the "LL" used on appellant's sheeting of like grade and quality. But trade marks are not established by sound. It is the sense of sight which is used in determining this question as to whether the trade mark of one company resembles that of another.

In the case of *Leggett & Meyer Tobacco Company vs. Finzer, 128 United States Reports, page 182*, this court, in speaking upon this subject, says: "Upon the second of the two points there is even less ground to sustain the position of the complainant. The two stars, the one used by the complainant, and the one used by the defendant, are so different in form and surrounding that it would not be possible for any person, *not afflicted with color blindness*, to mistake the one for the other. They differ in size and color. The star used by complainant on its manufactured goods is only a little over half an inch in diameter, with a hole in the center. The mark used by the defendant consists of a round paper label over three-fourths of an inch in diameter, with a red star and the word "Trade" on the one side, and the word "Mark" on the other, in gilded letters, on a red back ground, and having beneath the star the word "Light," thus forming, by the figure and the letters, the words "star light." One star has the silvery appearance of tin foil; the other has the glare of a red and yellow gilded back ground. The judgment of the eye upon the two is more satisfactory than evidence from any other source, as to the possibility of parties being misled so as to take one tobacco for the other, and the judgment is against any such possibility. Seeing in such case is believing; existing differences being at once

perceived and remaining on the mind of the observer. There is no evidence that any one was ever misled by the alleged resemblance between the two designs."

This case is not only applicable to the principle which we claim, but it seems to us is decisive against the pretended rights of appellant. The record fails to show that in a single instance has the goods of the one company been mistaken for that of the other, and while counsel for appellant have paraded before this court the great out-put of appellant's mills on this grade of goods, they have failed to show that any jobber, or retail merchant, or any consumer, has ever mistaken the "Cumberland LL" or the "Aurora LL" sheetings for the "Lawrence Mills LL" sheetings. This corroborates what is apparent to the eye, that the two in appearance are entirely dissimilar. A person would have to be afflicted with something more than color blindness to mistake one for the other. If no other defense existed that would be sufficient to defeat the claim of appellant to its right of trade mark in the letters "LL." We respectfully insist that a comparison of the two trade marks, which we here present, will be sufficient to decide the case against the pretended rights and claims of the Lawrence Manufacturing Company.

APPELLANT IS ESTOPPED IN EQUITY FROM ASSUMING THE RIGHT TO THE EXCLUSIVE USE OF THE LETTERS LL.

First. Because the adoption of those letters was to indicate grade and quality and not origin or ownership. (See page 46 of transcript of record.)

Second. It manufactured Shawmut LL and Albany LL, thereby educating the trade to look for something in addition to the letters LL to indicate whether the purchaser was getting the Lawrence LL sheetings.

Third. In advertising in Sheldon's Pamphlet, under its

name and its trade mark of the bull's head, it advertised the three grades of sheeting, namely: XX, XXX and LL, thereby clearly indicating to the trade and public that the letters LL indicated grade and quality as much as the letters XX and XXX, and not the origin or ownership. They had established that by the bull's head and the name of the company. In invoicing its sheetings it always invoiced them as "Lawrence LL's."

These propositions are established not only by an overwhelming amount of evidence, but they are not denied by appellant, and any one of them, as it seems to us, is sufficient to debar appellant from maintaining any right to the exclusive use of the letters "LL." The law is clear that on any design or symbol that indicates only grade or quality, no trade mark can be established, and from no point of view can appellant in this case claim that it has used the letters "LL" for any other purpose than to designate grade and quality. The attempt to secure the exclusive right of the letters "LL," that is sought to be enforced in this case, has no parallel in commercial transactions. At the time the evidence was taken by the respective parties to this suit there were more than forty-eight different brands of "LL" sheetings in the market, and some of them had been in the trade for more than 14 years. The consensus of opinion of the witnesses upon this point, is that in the trade the letters LL indicate, not the origin or ownership of the goods, but the quality and grade, and the purchaser invariably names the manufacturer whose goods he wishes to purchase.

The fact is that by reason of approved machinery and skilled labor, the western and southern mills are placing in the market a grade of four-yard sheeting, which is curtailing quite largely the sale of the Lawrence LL's in the market, and has popularized the LL sheetings in the market, and this bill is brought by the appellant to gain a monopoly on that class of goods. It was unsuccessful in the court below,

and we apprehend that it will meet with the same fate in this court.

The learned counsel, who appear for appellant, have cited the testimony of various witnesses in their argument in support of their claim for a trade mark on the letters LL, but in each instance your honors will find, by reading the record, that the position of the witnesses quoted, has either been impaired or utterly destroyed on cross-examination, or flatly contradicted by other witnesses whose testimony appears in the record.

Under these conditions we apprehend that the court of equity will not relieve a person seeking to gain the exclusive control of letters or symbols for a trade mark. The finding of facts by the court below is against the position assumed by the learned counsel in quoting from and reviewing the testimony of the various witnesses whose testimony is found in the record.

The case of *Hewitt vs. Campbell, 109 U. S. Reports, page 103*, as it seems to us, is decisive. Mr. Justice Harlan, in speaking for the court in that case, said: "The court below might well have dismissed the bill upon the sole ground that the complainant had failed to establish the facts upon which he based his claim for relief, and which must have been established before any relief could be granted."

Applying this to the case at bar, we respectfully insist that the decision of the court below should be affirmed on the ground that where there is a conflict of evidence, this court will not disturb the finding of the court below.

A. J. HOPKINS,

Attorney and of Counsel for Appellee.

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A. J. HOPKINS,

Attorney and of Counsel for Appellee.

Supreme Court U. S.
FILED.
DEC 1 1890
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 101.

LAWRENCE MANUFACTURING COMPANY,
Appellant,

vs.

TENNESSEE MANUFACTURING COMPANY,
Appellee.

Supplemental Brief for Appellee.

DICKINSON & FRAZER,
Attorneys for Appellees.

Supreme Court of the United States.

LAWRENCE MANUFACTURING COMPANY,
APPELLANT,

vs.

TENNESSEE MANUFACTURING COMPANY,
APPELLEE.

Question of Jurisdiction.

I.

The appeal should be dismissed, because the subject-matter in controversy *between the parties to this suit* does not exceed in value $5,000.

II.

Statement.

The bill is filed to restrain the defendant from impressing the letters "L L" upon brown cotton sheetings weighing four yards to the pound, and for an accounting for the profits realized by the defendant upon the sale of such sheeting so labeled. (Trans., 2, 5.)

The action is based on the claim to these letters as a trade-mark upon such goods, and the exclusive right to use them. (Trans., 2, 480.)

Thus, two questions are involved—the right to recover profits and the right to restrain the use of the letters.

Right to Trade-mark.

The claim is not based upon any right acquired under the United States trade-mark statute. It is not a registered trade-mark. The action is based exclusively on equity principles and on the common-law right by appropriation and user. (See bill —, trans., 1–5.) In this respect it is like Wilson *v.* Sandford, 10 H., 102. Therefore, the jurisdiction of this Court rests alone on the amount in controversy; that is, the money involved and the money value of the subject-matter of controversy. The bill was dismissed. (Trans., 479.)

The circuit judge declined to pass upon the value of the controversy, but expressly left that question upon the record as made up, to be determined by this Court. (Trans., 485.)

The case stands like that of Wilson *v.* Blair, 119 U. S., 387.

Jurisdiction.

First. When amount in controversy is the ground for jurisdiction "the matter in dispute must be money, or some right the value of which in money can be calculated and ascertained."

Barry *v.* Mercrin, 5 How., 103.
Pratt *v.* Fitzhugh, 1 Black, 271.
DeKraft *v.* Barney, 2 Black, 704.
Potts *v.* Chumasero, 92 U. S., 358–361.
Youngstown B. *v.* Hughes, 106 U. S., 524.

Second. When it does not appear, by record or otherwise, that the value of matter in dispute exceeds $5,000, the appeal will be dismissed.

Parker *v.* Morrill, 106 U. S., 1.
Elgin *v.* Marshall, 106 U. S., 580.

Third. The value of the matter actually in dispute in the particular suit determines the jurisdiction, and the effect of the judgment in a subsequent suit between the same or other parties cannot be looked to.

Elgin *v.* Marshall, 106 U. S., 578.
Troy *v.* Evans, 97 U. S., 1.

Fourth. The fact that complainant may claim rights against other parties, growing out of the same question, which aggregate over $5,000 cannot avail anything, for the several claims cannot be added to give jurisdiction, even though all such alleged infringers were parties to this suit.

Ex parte B. & O. R. R., 106 U. S., 55.
Paving Co. *v.* Mulford, 100 U. S., 147.
Russell *v.* Stansell, 105 U. S., 303.
Smith M. P. Co. *v.* McGrounty, 136 U. S., 237.

Value in Controversy.

This involves the money sued for as damages for infringement and the value, measured by money, of any other subject-matter of contest.

1. *Money in Controversy.*

The bill alleges no amount sued for, and gives no minimum. (Trans., 1–5.) On the contrary, it says that the amount is unknown. (Trans., 4.) The only evidence offered is the sworn petition for appeal, and that forms no part of the record of the lower court.

128 U. S., 397.

This petition (Trans., 480), Part II, after certain allegations in regard to the value of the letters, which will be considered hereafter, states: "And your petitioner *is informed, advised, and believes* that the damages due from this defendant on account of the continued use—com-

plained of in said bill of complainant heretofore—of said letters, if said exclusive use be so confirmed to your petitioner, would, upon a proper accounting, be found by the Court to be, exclusive of costs, a sum in excess of $5,000." (Trans., 480.)

This is the only averment in the record as to the damages involved. The petition is sworn to by John I. Veeder. (Trans., 481.) He swears that the statements therein are true, "except so far as is therein stated on *information and belief*, and as to the same, affiant believes it to be true."

It will be observed that as to the statement as to value of damages, he expressly says "is informed, advised, and believes." (Trans., 480.) This would do well enough for a bill to raise an issue of fact; but after the issue is raised, it is mere hearsay, and is worthless as evidence, and must be sustained by the testimony of the informers, or of others who profess to know the facts. Veeder not only does not profess to know, but, as is shown by the affidavit of Goodwin (Trans., 483), was not in a position to know, and, as a matter of fact, could not know, any thing about it. He knew nothing of defendant's sales nor profits, and was a *mere business associate in the office of complainant's solicitor*, at Chicago, not a cotton manufacturer, and in no way competent to testify, *except* on *information and belief*. (Trans., 480.)

This is all the evidence in the record for complainant on this subject.

The affidavits of Geo. M. and Arthur Goodwin, the general manager and book-keeper of defendant, show, from the books of the company, that the entire profits on this goods was but $1,669.65. (Trans., 483.)

Thus, the *money* involved in this litigation is but $1,669.65.

2. *Trade-mark.*

Conflicting rights to use "L L" *as a trade-mark* are not raised in this suit. It is not a contest between complainant and defendant as to which has the right to a trade-mark. Defendant does not claim "L L" as a trade-mark. It does not deny complainant's right to use these letters in any way it may wish. It simply says that it uses these letters to denote grade and quality; that this use by it is understood in the trade to denote grade; that they denote a class of sheeting weighing four yards to the pound, and known in trade parlance as four-yard sheetings; and that the public generally has a common right to so use these letters, and that they are so used by many manufacturers and that complainant may so use them, but cannot appropriate them exclusively as a trade-mark. (Trans., 7, 8.)

The actual subject-matter of controversy must be measured by the actual effects of the decree on the rights of the parties to the litigation. Assume that the decree will go for complainant as broadly as possible, under the pleadings, it can but restrain defendant from using these letters and award damages for infringement. We have considered the damages, and now are dealing with the trade-mark. Let us assume, further, that the Court, in order to reach such a decree, decides that complainant has in this case made good its claim to "L L" as a trade-mark. This does not take from defendant anything in which it claimed a property right. It claimed no ownership, sets up no right to a trade-mark.

What does complainant get? Certainly not a right to the trade-mark as against the public. No one is concluded by this litigation but defendant. Complainant may bring a hundred other lawsuits, and the proof may be different, and it may lose them all. It may lose this

suit and yet win the other hundred. It may, under this suit, restrain defendant forever, and may, in other suits, lose the right to the letters as to all the rest of the world.

The value of the trade-mark claimed is not and cannot be the subject-matter of controversy in this suit; for, to so hold, there must be the condition precedent that this suit binds all others who are not parties to it and confirms to complainant the full value of the trade-mark. If the entire value of the trade-mark were involved in this litigation, then it would follow, with relentless logic, that in it could be recovered all the injury that had been sustained by complainant by infringement, whether the other trespassers are parties or not. If the whole value of the trade-mark is involved in this suit as between these parties, then nothing whatever is involved in the other suits which complainant says (Trans., 480) are now pending against other alleged infringers upon this very claim. As a part cannot be equal to the whole, it follows that the controversy between these parties cannot be equal to itself increased by the matters in controversy in the other suits.

This analysis brings us to a clear perception of the real controversy and its value. It is nothing more nor less than the amount of complainant's rights trespassed on by defendant; and this, up to the decree, was, by the legal standard of measure fixed by law, the amount of profits made by defendant on the goods bearing the pirated mark.

It is true that in one sense the trade-mark to complainant is involved, but not in the sense of its being a subject-matter contested for between these parties; and it is true that the collateral effect of this suit upon other suits may be such as to assist in establishing or destroying

complainant's claim as against the rest of the world. But that would be incidental to this suit, and not a finished result in the suit. But it may be said that the court, in enjoining and awarding an account, necessarily finds that complainant has a trade-mark. That is true, but only as a fact in this suit as between these parties, on which the remedies sought are based. A brings an action against B for a nuisance on his land and for an injunction. B admits the act, but says that A does not own the land—that it is a common, and he cannot be excluded. He does not set up any ownership to it in any way, but says all the world may use it. A proves his title, and B is enjoined and damages are awarded. In no sense was the value of the land in controversy between them, but only the extent of the wrong done by B, and yet A had to establish his title to the land as against B. This suit would not establish the title to the land as to any others committing a like nuisance, although they might, on account of its issue, pay up without suits and desist from further trespass. This very question was decided in Elgin *v.* Marshall, 106 U. S., 578. The judgment was on coupons for $1,660.75 from bonds exceeding $5,000 in value. The validity of the bonds was contested, and the Court held that they were constitutionally issued. This was the foundation right for recovering on the coupons, and yet the Supreme Court would not entertain an appeal, because the value of the bonds was not the subject-matter of litigation. The Court said: "It is true that the point actually litigated and determined in this action was the validity of the bonds; and as between these parties, in any subsequent action upon other coupons, or upon the bonds themselves, this judgment might, and as to all questions actually adjudged would, be conclusive as an estoppel" (106 U. S., 579). Again: "In our opinion, Secs. 691 and 692, Revised Statutes, which, as amended by Sec. 3 of the act of February 16, 1875, Ch. 77, limits

the jurisdiction of this Court, on writs of error and appeal, to review final judgments in civil actions and final decrees in cases of equity and of admiralty and maritime jurisdiction, to those where the matter in dispute, exclusive of costs, have reference to the matter which is directly in dispute in the particular cause in which the judgment or decree sought to be reviewed has been rendered, and do not permit us to estimate its collateral effect in a subsequent suit between the same or other parties." *Idem.*

See also pages 581–2, same case.

In the case at bar appellant proceeds upon the idea that the whole value of his trade-mark in other suits, and as to all the world, is the direct matter of controversy in this case. In his petition (Trans., 480)—which is sworn to, and is his only proof—Part I, he sets out, as the first ground to sustain the appeal, that this judgment by agreement with parties in other and distinct suits shall control those suits. Parties cannot, by agreement, give this Court jurisdiction of their own suits.

Webster *v.* Buffalo Insurance Co., 110 U. S., 386.

Much less can such an agreement give it jurisdiction of the suit of another. In the second part of the petition, which undertakes to show the value in controversy, complainant says that "the main purpose of this suit was to establish the validity * * * as a trade-mark of said letters 'L L'" and that "the exclusive use of said letters * * * has been in the past, and also would be in the future, of the value to your petitioner at least of upward of $50,000; * * * that during which period, as to this defendant, your petitioner enjoyed the unmolested use of said letters; such use thereof to this your petitioner was of the value of more than $5,000" (Trans., 480). It is always the trade-mark and its exclusive use as against the world on which the value is estimated.

This is all, except one other averment, as follows:

"And the exclusive use of said letters as aforesaid, as against this defendant, if judicially confirmed to your petitioner, would be *hereafter* to your petitioner of the value of more than $10,000." This is not proof, but prophecy. It undertakes to say what will be, and not what is, the damage. In short, what amount of goods defendant would hereafter have made, stamped, and sold, and what profits would have been made on them, in absence of the restraint sought. This, of course, depends on many contingencies, and one of the most obvious is, whether defendant shall continue its corporate life.

The whole theory of the appellant is entirely wrong. The Court will not presume that defendant would ever, in absence of injunction, continue what had been, by an award of damages, adjudged to be a wrong. The presumption is the other way, and unless the wrong done be permanent in its character, the measure of damage will not be the value of the property, but only the injury already done to the property or right. Using a trade-mark is a trespass. It is like a trespass or nuisance affecting land. If such nuisance be permanent in character, the injury to the fee, looking beyond the present, is the measure of damage. If it be not necessarily continuous in character, and can be abated, the measure of damage is only the injury already sustained.

87 Tenn., 614.
G. R. and I. R. R. *v.* Heisel, 38 Mich., 62.
Uline *v.* N. Y. C. and H. R. R., 101 N. Y., 98.

In the last case, Earle, J., said: "I think it is quite absurd and illogical to assume that a wrong of any kind will forever be continued, and that the wrong-doer will not discontinue or remedy it, and that the convenient and just rule sanctioned by all the authorities in this

State, and by the great weight of authority elsewhere, is to permit recoveries in such cases by successive action, until the wrong or nuisance shall be terminated or abated." Of course, a court of equity may enjoin such continuance, but this rests on equitable principles, and does not change the value of the injury done, nor of the amount involved in the controversy.

Reply Brief.

There are so many erroneous and misleading statements in appellant's brief that the unpleasant duty of pointing them out is imperative. They will be taken up in the order in which they occur:

1. On page 5 is the following:

"12. In August, 1884, the complainant filled one order for J. V. Farwell & Co., of Chicago, for 150 bales of four-yard goods. That firm then had a private stamp or mark, '*Albany*,' which it sent to manufacturers to be used in stamping goods being made for said firm. Complainant so filled one order seventeen years after it had adopted its trade-mark, and commenced this immense out-put thereunder. The extent of the use of 'L L' with such private brands as 'Albany,' was not developed in the evidence, for defendant's attorneys instructed their witnesses not to answer complainant's questions in this regard.

Vide Hobb's, Sup't Aurora Mills, p. 411."

This is unfair and misleading in its two essential statements.

(*a*) The brand of Farwell was not "Albany" as stated, but "Albany L L," and this is shown by complainant's own treasurer.

Sargent, Rec., p. 301, q. 459.

(*b*) This defendant's attorneys did not instruct their witnesses as stated, and there is nothing in the record to

show it. The case cited is where the attorney of the Aurora Mills, in a single instance, did so in a deposition taken in another case, which is used in this by stipulation. The record does not warrant the sweeping assertion made.

2. The first assignment of error (page 6) is not well taken, for the answer sets up the fact that "L L" had, prior to its adoption by complainant, been used upon a grade of sheeting made by the Atlantic Mills (Record, page 9), and the proof shows that this was true, and that this sheeting was so near like that of complainant's that to the ordinary purchaser they were indistinguishable, and that they compete. (See Table II, pages 9, 10, and 11 of brief of appellee.)

The assignment manifestly rests upon the implication that the judge said "that the pleadings set up that "L L" had been used on this special four-yard class." The Court said "upon goods of this general class" (Record, page 467, line 11); that is, upon sheetings; and the proof shows that they actually competed. It was not necessary to allege that they had been used on this particular grade. If it be alleged that the two goods were like articles of production—as knives, axes, spades, or sheetings (as in this case)—the allegation is sufficient.

3. On page 7 is this:

"*Fifth.* That the use by the Atlantic Mills of "L L" from 1862 to 1865 was merely for the purpose of indicating quality (Rec., p. 470). There is no pleading and no proof whatever tending to such a conclusion."

This is a rather remarkable statement. Proof of this very fact was made by complainant. (Rec., 259, 260, Qs. 19, 21, and 24.)

4. The first assignment of error on the law (page 8) puts the judge in a wrong position. He did not find, as stated, "that to sustain a trade-mark an *affirmative purpose*, at the time of adoption, to thereby *distinctively* indicate the origin or ownership must be proven." The principle stated was not that the trade-mark must of itself "distinctively" indicate origin, but that it must do so "either by itself or by association." (Record, page 471.)

5. The second assignment (page 9) likewise puts the judge in a false attitude, for he did not say "if any other purpose was involved in the adoption of the device," but he said that the mark, if it was adopted for the purpose of indicating class, grade, style, or quality, cannot be upheld as a trade-mark. (Record, page 471.)

6. The third assignment (page 9) is likewise misleading, for the judge nowhere says that "complainant must plead and prove that it was the first to employ this mark 'on the same or like articles of production' to entitle complainant to protection, and that the *onus probandi* is upon complainant to so show, and that this is not wholly a matter of defense." The Court said: "If it appear that the claimant was not the first to use or employ the mark on the same or like articles of production he will not present such a title to or right in the design as will entitle him to protection." (Record, page 471.)

7. The fourth assignment (page 9) does not set out a point of law decided by the circuit judge in this case. It puts him in a false position. It is a quotation from his discussion of a question, the decision of which is expressly reserved. The quotation is near the bottom of page 475. On the next page, in this very connection, he says: "But we must not dwell upon this question, as its correct solu-

tion is not essential to the proper determination of the present case, since, as already shown, the letters 'L L,' as used on complainant's first quality of cotton sheetings in connection with the name 'Lawrence Mills,' and the device of the bull's head, indicate only grade, class, and quality, and not origin, ownership, or manufacture."

8. The fifth assignment (page 9) is made up of two distinct propositions. The first, that the mark must indicate "only the origin and maker," is taken, in substance, from the discussion last referred to, and was not decided by the Court. It undertakes to put him in error on a question not adjudicated.

Thus, out of the five errors of law assigned, all place the judge in an entirely false position.

9. The second proposition in the fifth assignment presents no point of law, and from it it is impossible to ascertain the ground upon which the error is assigned. The last assignment is general, involving nearly all of the facts and law of the case in one complex objection.

10. On page 12 the following occurs:

"Further, there is an uncontradicted and unchallenged matter of evidence in the record which sets at rest any general conclusion which might be predicated upon this general custom. We repeat that there was a habit or custom in this trade, as there was in other trades, and also in algebra, to select the *first* and *last* letters of the alphabet to denote grade, quality, and progression; but when middle letters of the alphabet were selected, until the trade shall have attached to them some significance (which, by the same token, establishes a trade-mark) they, the middle letters of the alphabet, are as meaningless as the most arbitrarily selected trade-mark that ever was used."

No references are made to the record to sustain this statement. Issue is directly taken with it. The evidence does not show any such habit or custom in the trade. On the contrary, it shows that all the letters of the alphabet were used to denote grade. (See Table III, page 13, brief of appellee.)

11. On page 16 is the following:

"Without other citations to many parts of the record which might be made, it is sufficient, in order to show the fortuitous, intermittent, and inconsequential use of the mark now in question by the Atlantic Mills prior to its adoption by complainant, to cite the testimony of Mr. Charles S. Smith, who, from 1859 on, in New York, has been a large buyer in this class of goods, and especially of the output of the Atlantic Mills (pages 45 and 49, question 497), who says that he never heard of said Atlantic 'L L' goods."

This makes Mr. Smith say that "he never heard of said Atlantic 'L L' goods"; that "he from 1859 on, in New York, has been a large buyer in this class of goods, and especially of the output of the Atlantic Mills." On turning to the citation (page 59, question 497) it appears that instead of buying Atlantic goods "from 1859 on," he limits it from 1857 to 1862, says not a word about New York, and does not say that "he never heard of said Atlantic 'L L' goods." The answer to the very next question shows that he had heard of them.

12. On page 25 appears:

"The word 'Albany' belonged to Farwell. He wanted to sell some of the Lawrence goods, and wanted to advertise them as coming from them through him. The transaction is determinative proof of the popularity and public reputation of complainant's trade-mark. There was no deception, for the goods were sold under Farwell's own name, and under his trade-mark—'Albany.'"

There is no proof whatever that Farwell ever advertised or wanted to advertise these goods as anything but his own. The statement is entirely gratuitous.

13. On pages 26, 27 occurs the following:

"When one sends to a lithographer or printer a plate having a *fac-simile* of his signature (Albany) to be printed upon the card, circular, or policy of insurance, and in the use of which the lithographer or printer uses a design for which he owns a common-law trade-mark or a copyright, and if the lithographer or printer honestly and promptly returns the *fac-simile* with the goods, is it to be inferred that thereby the lithographer or printer has granted any license or forfeited any rights under his trade-mark or copyright?"

The case put is not similar to the one in question, and leaves out the most essential feature. It does not appear that Farwell & Co. furnished simply a brand with "LL" on it; but it affirmatively appears that the brand furnished by them consisted of "Albany LL." (Record, page 301, question 459.)

The passage quoted implies that Farwell only furnished a brand with "Albany," and that appellant used this word, "Albany," in connection with its own brand or design, "LL," in which it owned a common law trade-mark, and that it simply returned the brand "Albany," and not the brand "Albany LL."

14. The following occurs on page 16:

"It is alleged by defendant, and was held by the Court below, that even if complainant, say between 1867 and 1872, had established common-law trade-mark rights in 'LL,' as indicating origin and ownership, such rights have been lost, for the reason that, as a matter of fact, in the trade this symbol or signet has come to mean *only* grade, quality, or class, and not origin, ownership, or manufacture."

There is nothing in the opinion of the Court to show that it held as stated. The Judge distinctly found that "L L," in the beginning, was adopted to mean grade, and he nowhere intimates that it ever meant anything else, or that complainant had lost any right in it as a trade-mark by the fact that it had come to mean only grade. (Record, page 476.)

15. On page 17 the following occurs:

"Some of defendant's witnesses, who live under the eaves of the defendant's mills, testified categorically that there is some competition; but defendant's principal witness of this class, Mr. Benjamin Herman, of Nashville, says 'there *is* competition; at the same time *they do not come in conflict with each other* in our trade.'" (Page 375, question 161.) The fact is entirely ignored that a number of appellant's own witnesses testify that there is competition between 'Atlantic L L' and 'Lawrence L L.'" (See Table II, pages 9, 10, and 11, brief of appellee.)

16. On page 49 appears—

"The addition of 'L L' was made at the request of the purchasers from the defendant company, so that, as we contend, they might sell defendant's goods as the goods of complainant, as appears from the citations to the record already made."

The fair meaning of this is that there is proof in the record to justify a conclusion that the request was made for the purpose of selling defendant's goods for those of complainant. This statement is entirely gratuitous. There is no such proof, and nothing akin to it. The statement is absolutely misleading. The only proof on the subject is the statement of Goodwin, page 390, as follows:

A. 290. It is a fact that it was suggested to us to affix "L L" to our Cumberland stamp by our customers, the reason being stated that "L L" had grown to be ac-

cepted by the trade as a distinctive mark for four-yard goods, and, inasmuch as Cumberland sheeting came under that general class, it should carry the distinctive mark for four-yard goods.

Q. 292. At the time of such suggestion, did your customers, or either of them who made such suggestions, say anything about Lawrence "L L's"?

A. They did not.

Unless language is to by interpreted by contraries—as the Fates were called Parcæ, "*quia non parcebant*"—it is inconceivable how appellant can make the statement quoted.

17. On page 49 is the following:

"It further appears that, even at the date of the commencement of this litigation, it was the habit of the retail dealers who were aiding these infringing manufacturers in this piracy, to conceal the goods of complainant under the counter in an attempt to palm off the defendant's goods as the goods of the complainant, and thereby help to destroy the reputation of "L L.'"

This statement is astounding, and there is not one word of proof to show any one of the facts set out in it. There is no one who says that any retail or wholesale dealer was aiding defendant in any such effort; no one who says that goods of complainant were concealed by any dealer under the counter, or anywhere else, in an attempt to palm off defendant's goods for complainant's; no one who says that anybody ever tried in any way to palm off defendant's goods for those of complainant.

To sustain this charge of conspiracy to perpetrate a fraud, the testimony of Hill is cited. He is complainant's witness, and, as his testimony shows, a partisan one. He is a jobber, and speaks of the jobbing trade. (Question, 1,624, page 164.) Not a word in his testimony goes to show any "habit of the retail dealers" such as is

charged. He does not speak of any one assisting defendant in the plan of deception charged. He does not say that goods were concealed under the counter, nor that any one tried to palm off defendant's goods for those of complainant. He expressly says, in answer 1,624 (page 165), that he never sold, in the manner indicated, any of defendant's goods. In further support of the statement, page 254 is cited. There is not a word on the page referring to the Tennessee Company, but it all refers to "Wabash L L," made by the Evansville Manufacturing Company. Besides, in question 994, page 256, the witness explains that he did not conceal the "Lawrence L L" goods. Nowhere does he intimate that any other "L L" was offered to be palmed off for that of complainant.

Cases Relied on by Complainant Distinguished.

I.

In Kinahan *v.* Bolton, XV Irish Ch., 79, the decision was put largely upon the ground that the whisky of complainant was prepared by a secret process, and that *it had no other name than L L.* There was no evidence that L L had been adopted to distinguish this grade of whisky from other grades made by complainant. It did not appear that complainant made any other grade, nor that whisky is graded or susceptible of it by any fixed standard, such as weight in the case of cotton goods. It did not appear that L L was ever used for, or that it ever acquired, any grade meaning. In short, the question of using the letters to denote grade or quality, as distinguished from another grade or quality, did not arise in any way in that case.

II.

In Gillott *v.* Esterbrook, 48 N. Y., p. 378, the Court found that "*the said number was selected and used by the*

plaintiff as his trade-mark to indicate, in connection with his name, the origin and ownership of the said pens so manufactured by him, and not to designate their quality merely."

It was further found that the boxes and labels were an imitation, and that they were adopted with a fraudulent intent and with a knowledge of complainant's rights.

III.

In Ransom *v.* Graham, 51 L. J. (N. S.), Ch., 900, the Court says: "But *the single purpose* for which the letters or marks were applied was that the several articles made by the plaintiffs might be known as theirs, and might be distinguished from all other ploughs not made by them, of whatever form or size, and whether or not like them, or in whatever other respect they might differ from their goods." And again, page 901, (the marks) "were originally impressed by the plaintiffs for the purpose of characterizing the entire ploughs as articles manufactured by them, and in order that such articles might be known in the trade and by persons who might buy them as being made by the plaintiffs, and that the marks are therefore properly described as trade-marks," &c. * * * "And it is wholly disproved by plaintiff's evidence that the marks or the parts of ploughs are meant only to designate the patterns of the ploughs," &c. Again, page 902: "Performing, in this respect, the functions of a jury, I have come to the conclusion, and I find, that the plaintiff's marks *were* from *the beginning affixed and* have ever since been used by them for the purpose of characterizing and announcing to such part of the whole world as might become purchasers, that the goods on which the marks were impressed were of the plaintiff's manufacture; that such marks have always been and are their trade-marks, and in every sense their property."

It is plain that this case has no bearing upon the very point in controversy in this case, which is the use of the letters to denote grade or quality.

Respectfully submitted.

J. M. DICKINSON,
Solicitor for Appellee.

138-55
138-55 2

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~1040~~ ~~633~~ 398 102

THE LAWRENCE MANUFACTURING COMPANY,
APPELLANT,

vs.

THE JANESVILLE COTTON MILLS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED SEPTEMBER 9, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1040.

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vs.

THE JANESVILLE COTTON MILLS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

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1 UNITED STATES OF AMERICA, }
Western District of Wisconsin, } *ss:*

At a special term of the circuit court of the United States for the western district of Wisconsin, begun and held, according to law, at the court-house in the city of Madison, in said district, on the first Tuesday, being the 5th day, of July, A. D. 1887; and on the ninth day of said term, to wit, the 26th day of July, A. D. 1887—present and presiding the Hon. Romanzo Buan, district judge—the following proceedings were had, to wit:

LAWRENCE MANUFACTURING COMPANY, Complainant,
against
JANESVILLE COTTON MILLS, Defendant.

Be it remembered that heretofore, to wit, on the 1st day of June, A. D. 1886, came said complainant, by its solicitors, and filed its bill as follows, viz:

2 *Bill of Complaint.*

United States Circuit Court for the Western District of Wisconsin, to the July Term, 1886.

LAWRENCE MANUFACTURING CO. *vs.* JANESVILLE COTTON MILLS.

Injunction bill.

To the honorable the judges of the circuit court of the United States for the western district of Wisconsin, in chancery sitting:

The Lawrence Manufacturing Company, a body corporate under and by virtue of the laws of the State of Massachusetts, and a citizen of said State, having its principal place of business at Lowell, in said State of Massachusetts, brings this its bill of complaint against the Janesville Cotton Mills, a body corporate under the laws of the State of Wisconsin, and a citizen of said State, having its principal place of business at Janesville, in said State.

I.

3 Thereupon your orator, complaining, says that since the date of its incorporation it has been engaged and is now engaged in the manufacture of sheetings and in the sale thereof throughout the United States and in other countries to others trading therein; that in said trade there are several standards or classes of goods generally recognized in this and in other countries, the first of which includes sheetings of such weight that two and eighty-five one-hundredths (2.85) yards thereof will weigh a pound; the second thereof includes sheetings of such weight that three yards thereof will weigh a pound, and the third thereof includes sheetings of such weight that four yards thereof will weigh a pound; and, further, that while in said several classes of goods there are certain general char-

acteristics, such as weight, which, with comparatively slight variations, are common to all manufacturers of said respective classes, still, as between different manufacturers of goods corresponding as to classes, there are great differences of excellence and reputation as to the quality of the raw material used, the methods and the care in the manufacturing, and the toughness and the lasting qualities of the goods made, and there are also great differences in the guarantees thereof by the respective rival manufacturers, growing not only out of their special guarantees specifically made, but also, and as a rule, out of
4 the age, experience, and financial responsibility of the several manufacturers.

II.

Further, that, to wit, in the year 1867, this complainant adopted and thereupon became duly vested with the exclusive right to use a label or trademark for all goods of its manufacture coming within said third class to distinguish sheetings of its manufacture from sheetings of the same general class manufactured by others, the substantive, distinctive, and chief feature of which label was and is an arbitrary sign or symbol consisting of the letters "L L" prominently appearing upon such label or stamp; and said trade-mark, with certain environments which have been changed from time to time, has been so used by said complainant since said date of adoption, and, to wit, for more than fifteen years it has been imprinted upon each and every piece and bolt of such sheetings of said third general class made and sold by the complainant during said period; and, further, said trade-mark was so adopted by your orator for the purpose of distinguishing sheetings of its manufacture of said third general class from similar goods manufactured by others
5 and then known in the trade under distinctive trade-marks, such, for instance, as the manufactures known as "Agawam F's" and "Atlantic P's."

In connection with said trade mark or substantive element of said label, under and in connection with which the trade reputation of the complainant has been established, complainant has used the words "Lawrence mills" and the word "sheetings" in different juxtapositions, and also at times the picture or representation of a bull's head and at other times the picture or representation of a "bull rampant"—that is, of the whole body of a bull in a rampant position—and, in connection therewith and underneath the same and in a separate position, has always used said capital letters "L L" as and for the purpose aforesaid.

III.

Your orator further shows unto your honors that at great expense and by years of endeavor your orator has earned and acquired a trade reputation of great value as a manufacturer of said sheetings under its said trademark, with this result, that sheetings of the said third general class of your orator's manufacture have come to be universally known as "L L sheetings," and

6 sheetings so known, named, and called for import the excellent raw material, the method and care of manufacture, and the general guarantee of excellence and lasting quality for which your orator has a valuable and thoroughly established reputation as to all goods of its manufacture; further, that complainant had succeeded in introducing and selling sheetings under said trade-mark to an amount equal for each week of one year to more than five hundred and fifty thousand yards; further, that such has been and is the general reputation in the trade of said sheetings, so made and marked by complainant, that when a consumer calls upon a retailer of such goods for "L L sheetings" it has been generally understood that such consumer desires sheetings of the manufacture of your orator; further, that such is the reputation of said sheetings, so made and marked by complainant, that it has become necessary for dealers generally to keep supplied with such sheetings made by complainant to supply the demand for the same, and, further, that a habit has recently grown up among many of said retail dealers to keep such a supply of your orator's goods on hand, but concealed, and to keep a supply of the goods of such infringers on hand and in sight, and with the latter to supply general demands for "L L sheetings" made by consumers who have not been made
7 aware of said infringement, fraud, deceit, and spurious goods and only to deal out the genuine "L L sheetings," to wit, sheetings of said general class made by your orator, to those who are informed of said piracy upon the trade-mark, trade label, and trade reputation of your orator, as aforesaid, and who question the spurious goods so offered—that is to say, to those who specially ask for "L L sheetings" made by your orator.

IV.

Further, your orators show unto your honors that the said Janesville Cotton Mills has been recently organized, to wit, in the month of April, 1886; that it is in law and in fact the successor of the Janesville Cotton Manufacturing Company, having succeeded to and having acquired all the assets and property and good will of said Janesville Cotton Manufacturing Company, including two fully equipped cotton mills, which, prior to said date of organization, were owned and operated by said Janesville Cotton Manufacturing Company, and that said Janesville Cotton Mills is owned and officered, as your orator is informed and believes, with one exception, by the same persons as was the said Janesville Cotton Manufacturing Company, and that the said Janesville Cotton Mills has advertised
8 itself to the public as the successor in all respects as aforesaid of the said Janesville Cotton Manufacturing Company, as per a circular letter issued to the trade by said Janesville Cotton Mills in the months of April and May, 1886, a copy of which is hereto attached and marked Exhibit A and made a part hereof.

V.

Your orator, further complaining, shows unto your honors that,

to wit, in the month of ——, 1886, your orator exhibited in this court a certain bill of complaint containing each and every the allegations in the first, second, and third paragraphs hereof contained, and, complaining against the said Janesville Cotton Manufacturing Company, alleged that said company had infringed upon the rights of your orator by the use of said letters "L L," so constituting the substantive element of your orator's trade-mark as aforesaid; and in said bill of complaint your orator further alleged that the said use of said letters tended to deceive the public and constituted in law a fraud upon the public as well as upon your orator, and that the therein alleged appropriation of the said letters "L L" by the Janesville Cotton Manufacturing Company was for the pur-
9 pose and with the intent, tendency, and effect of appropriating a part, at least, of the good will and trade reputation of your orator, and thus, by means thereof in deception and fraud, to introduce more speedily and more generally into public favor the sheetings of the said Janesville Cotton Manufacturing Company, to the damage of your complainant; and in said bill your orator prayed for subpœna, answer, and injunction both *pendente lite* and permanently.

VI.

And your orator, further complaining, shows unto your honors that in the trade the sheetings manufactured by your orator of the said third general class and so stamped as aforesaid are known as "Double L" sheeitngs; that sheetings are bought and sold under that name, and the reputation of "Double L sheetings" has been so established under said trade-mark by your orator as aforesaid as that such sheetings so named have come to be known as of the manufacture of your orator, the Lawrence Manufacturing Company, and that, for all intents and for all purposes, any sign, symbol, or signet which, when vocally pronounced, has the sound of "Double L" is precisely and exactly the same as the sign, symbol, or signet so constituting your orator's trade-mark as aforesaid, and that
10 among the larger portion of jobbers, retail dealers, and consumers who are informed as to the general manufactures in this country of sheetings of such third general class your orator's sheetings of said class are demanded, called for, and ordered as "L L" or "Double L" sheetings, and that in written orders therefor sometimes the said two capital letters are written and sometimes, as your orator is informed and believes, the word double with one capital letter L is written.

VII.

That thereupon the said defendant, The Janesville Cotton Manufacturing Company, confessed the said bill of complaint so heretofore filed as aforesaid upon representation by your orator that its single desire and purpose was to maintain and protect its property rights in said trade-mark, and that your orator did not desire to pursue the said defendant or to continue the said litigation for the purpose of recovering the damages which your orator had already suffered,

and thereupon a stipulation was made and entered into by and between your orator and the said Janesville Cotton Manufacturing Company, which said stipulation bore date March 30th, 1886, and was filed in said cause, and was in the following words and
11 figures, to wit, omitting the caption:

"*Stipulation.*

"It is hereby stipulated and agreed by and between the parties to the above-entitled suit—

"That the said Lawrence Manufacturing Company hereby consents that the suit commenced in the circuit court of the United States for the western district of Wisconsin against said Janesville Cotton Manufacturing Company be dismissed without costs to said Janesville Cotton Manufacturing Company, and also hereby waives all claims to damages against the said Janesville Cotton Manufacturing Company; and the said Janesville Cotton Manufacturing Company hereby agrees not to use the label or trade-mark "L L" on any goods of its manufacture after the first day of July, A. D. 1886; and it is further stipulated that a consent decree discontinuing said suit without the right of appeal shall be entered in accordance with the terms thereof.

"March 30th, 1886."

"(Signed) RAYMOND & RAINEY,
"*Solicitors for Complainant.*
"GEO. G. SUTHERLAND,
"*Solicitor for Defendant.*"

12 Your orator further, on information and belief, alleges that with said stipulation there was submitted to said Janesville Cotton Manufacturing Company a release proposed to be executed and delivered and actually executed and delivered by your orators to said company, pursuant to the terms of said stipulation, and also an agreement proposed to be executed and delivered by said company to your orator; that said agreement so submitted and proposed bound the said Janesville Cotton Manufacturing Company and its successors in said corporation and in business and its assigns not to use said trade-mark upon any sheetings after July first, 1886, and that said stipulation and said release and said agreement were adopted, as proposed and as is herein alleged, by the board of directors of said Janesville Cotton Manufacturing Company, to wit, April 3rd, 1886, and that your orator's solicitors were so notified by the solicitor of said then defendant, and that, pursuant to said action by said board of directors and pursuant to said general agreement so made as is herein alleged, and pursuant to said stipulation and contract, the consent decree of this honorable court was entered in said cause in the words and figures following, to wit:

"*Decree.*

13 "This cause coming on to be heard, Messrs. Raymond & Rainey appearing for the complainant, and Mr. Geo. G.

Sutherland appearing for the defendant, and confessing the said bill of complaint and consenting to this final finding and decree, the court doth order, adjudge, and decree as follows, the same being in accordance with the stipulation of the parties heretofore herein filed, to wit:

"First. That the taxable costs heretofore and now incurred herein shall be paid by the complainant.

"Second. That a perpetual injunction issue out of and under the seal of this court against the said defendant, The Janesville Cotton Manufacturing Company, demanding it and each and every its officers, agents, servants, and employees that from and after the first day of July, A. D. 1886, they and each of them shall desist and refrain from, directly or indirectly, using the said letters 'L L' upon any sheetings of their manufacture as in said bill of complaint is mentioned."

"We hereby assent to the above form of decree, the same being in accordance with the terms of a stipulation of the parties hereto, heretofore filed herein.

(Signed) "RAYMOND & RAINEY,
"*For Complainant.*

(Signed) "GEO. G. SUTHERLAND,
"*For Defendant.*"

14 But, notwithstanding the premises, said defendant, The Janesville Cotton Mills, being the successor in law and in business as aforesaid of the Janesville Cotton Manufacturing Company, issued said circular letter marked Exhibit A, hereto appended, all as aforesaid; whereupon your orator demanded, immediately upon being informed of the issuance of said circular letter, that said Janesville Cotton Mills should withdraw the said circular letter and should cease preparations to use said capital letter L with the word double written across it, and should not use the same; but the defendant has declined to comply with your orator's demand, and still threatens and proposes to use said capital letter L with said word double written across it as its stamp upon sheetings of said third general class on and after the said first day of July, 1886.

Your orator, further complaining, says that such a use would be a fraud upon the public and a fraud upon your orator, and a violation of the said stipulation and of the said contract and of the said consent decree, and a violation of the injunction ordered in said prior suit as aforesaid, and that such use would cause your orator irreparable damage and injury, for which, after the fact,
15 your orator would have no adequate redress, either in law or in equity. To the end, therefore, that the said defendant may, if it can, show why your orator should not have relief herein prayed, and may, upon the corporal oath of its proper officer, with regard to certain specified interrogatories hereto annexed and numbered one, two, three and four, but without oath as to the residue of this bill (an answer on oath, except with regard to said specified interrogatories, being hereby expressly waived), and, according to the

best and utmost of *his* knowledge, remembrance, and belief, full, true, and perfect answer make to all and singular the premises, and that the said defendant may be temporarily restrained by the order of this court from making, using, or vending any stamp or label upon sheetings involving the use of said combination of letters or any imitation thereof, and also any imitation of your orator's label, as hereinbefore described, and also and especially the use of a single letter L with the word "double" printed, marked, or stamped across it, or from the use of any combination of letters which, when either written or spoken, constitutes an imitation of the said trade-mark of your orator, and that your orator may have such other or further relief as equity may require and to your honors may seem meet:

16 May it please your honors to grant unto your orator a temporary restraining order, conformable to the prayer of this bill, until the further order of the court, and also a writ of subpœna directed to the said defendant, The Janesville Cotton Mills, and commanding it, at a certain time and under a certain penalty, to appear before your honors, then and there to answer unto this bill of complaint and to abide by and perform such decree as the court shall make in the premises, and that such restraining order as aforesaid is prayed may be issued; may also demand said defendant to show cause within such short and reasonable time as may be directed by the court why an injunction *pendente lite* should not issue in accordance with the prayer of this bill. And your orator will ever pray, etc.

LAWRENCE MANUFACTURING COMPANY,
By LUCIUS M. SARGENT, *Treasurer.*
J. H. RAYMOND, *Of Counsel.*

RAYMOND & RAINEY,
Solicitors for Complainant.

UNITED STATES OF AMERICA, *Western District of Wisconsin:*

STATE OF MASSACHUSETTS, *County of Suffolk,* } *ss:*

17 Lucius M. Sargent, being duly sworn, deposes and says that he is the treasurer of said Lawrence Manufacturing Company, complainant herein; that he has heard the foregoing bill read and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters be verily believes the same to be true.

LUCIUS M. SARGENT.

Subscribed and sworn to before me this 25th day of May, 1886, at the city of Boston, in the county of Suffolk and State of Massachusetts.

[SEAL.]

CHAS. HALL ADAMS,
Commissioner of Deeds for the State of State of *Wisconsin, also Notary Public.*

Interrogatories Referred to in the Annexed Bill of Complaint.

First interrogatory. State whether the Janesville Cotton Mills is the successor in law and in business of the said Janesville Cotton Manufacturing Company; and further whether the officers and stockholders of the said Janesville Cotton Mills are not the same, as to persons, as the stockholders and officers of the Janesville Cotton Manufacturing Company; and if in any respect not, state in
18 what respect not.

Second interrogatory. State whether or not said circular letter forming Exhibit A to this bill was so issued by said Janesville Cotton Mills as alleged.

Third interrogatory. State whether the said defendant has not prepared and is not preparing to use as a stamp upon its sheeting the capital letter "L," with the word "double" stamped or printed across the same, as in said bill is alleged.

Fourth interrogatory. State whether in said prior suit and pursuant thereto a stipulation, a decree, a release, and a contract were not accepted by said board of directors and acted upon as alleged in this bill.

The defendant is required to answer under oath the above interrogatories, numbered first, second, third, and fourth.

RAYMOND & RAINEY,
Solicitors for Complainant.

19 EXHIBIT "A" TO BILL.

Dissolution and Reorganization.

Dr. Henry Palmer, president; A. J. Ray, secretary; F. S. Eldred, treasurer.

OFFICE OF THE JANESVILLE COTTON MILLS,
JANESVILLE, WIS., ——, 1886.

M. —— ——:

The corporation known as the Janesville Cotton Manufacturing Company has been dissolved by mutual consent of the stockholders, and all of its property, consisting of two thoroughly equip-ed cotton mills, together with its franchises and good will, has been sold and transferred to the Janesville Cotton Mills, a new corporation organized for the purpose of continuing the manufacture and sale of the justly celebrated "Badger State sheetings."

The new corporation purpose to make the three grades of sheeting known to the trade as Badger State, R, R R, and L L, under a distinct trade-mark and stamp of their own, consisting of a diagonal bar across the letters R & L, with or without the word "double," to wit: Badger State, R, Dou R ble, Dou L ble.

It will be their aim to maintain a standard of quality equal to the best in the market, and with improved financial ability and increased facilities for making goods they hope to be able to meet

promptly the requirements of the trade and secure a place
20 for Badger sheetings in the stock of every jobbing house in the Northwest.

Mr. C. S. Longenecker, of Chicago, has been appointed selling agent, to whom orders are to be addressed, or they may be sent direct to the mills, which, in either case, will receive prompt and careful attention.

JANESVILLE COTTON MILLS.

Whereupon a subpœna issued, returnable the first Monday of August next ensuing, in words and figures following, viz:

Subpœna.

21 THE UNITED STATES OF AMERICA, } ss:
Western District of Wisconsin, }

The President of the United States of America to Janesville Cotton Mills, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the western district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of August next ensuing, at Madison, to answer to a bill of complaint exhibited against you in our said court by Lawrence Manufacturing Company, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshall of this district, who is hereby commanded to serve the same upon the said Janesville Cotton Mills, if to be found in his district, and due return thereof make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Madison, in the said district, this 15th day of June, in the year of our Lord
22 one thousand eight hundred and eighty-six, and of our Independence the one hundred and 10th.

[L. S.] F. M. STEWART, *Clerk.*

RAYMOND & RAINEY,
Compl't's Solicitor-.

It is ordered by our said court that the said Janesville Cotton Mills, the defendant aforesaid, do enter its appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

Served on the within-named "Janesville Cotton Mills," by delivering to A. J. Ray, the sec'y of said "Janesville Cotton Mills," personally a copy of the within subpœna this June 24, '86.

F. W. OAKLEY, *U. S. M.*

Fees:

Service	2 00
Tr. expense	4 00
Copy	40
	$6 40

Above fees p'd by F. M. Stewart, cl'k.

F. W. O.

23 And at the same time, to wit, the said 1st day of June, A. D. 1887, said complainant, by *his* said solicitors, filed their affidavits for restraining order as follows, viz:

Affidavits for Injunctional Order.

24 United States Circuit Court. Western District of Wisconsin. In Chancery.

LAWRENCE MANUFACTURING COMPANY
against
JANESVILLE COTTON MILLS.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

Charles S. Smith, of said city and State, being duly sworn, deposes and says that he is a member of the firm of Smith, Hogg & Gardner, commission merchants, of said city, and that the firms of George C. Richardson & Co. and George C. Richardson, Smith & Co. were predecessors of the firm of Smith, Hogg & Gardner aforesaid, and engaged in the same business as said firm, and that the three said firms have been for twenty years prior to January, 1886, the selling agents of the Lawrence Manufacturing Company, the complainant herein, and that deponent was a partner in the three said firms during the twenty years above specified, excepting during the years 1878 and 1879.

Deponent further says that he is familiar with the business of the complainant, and that it is a large and wealthy corporation and has a great reputation for the excellency of its products, and that since the year 1867 the complainant has employed the letters L L as a trade-mark on an article of sheeting of its manufacture of
25 four yards to the pound, and that because of the excellency of this product and of the large amount of sheetings which deponent's firm has distributed with this distinctive mark said mark has become of great value to the complainant.

And deponent further avers that if — should discontinue the use of the aforesaid trade-mark L L the effect would be largely to decrease both the quantity of goods sold by deponent's said firm and also the price which it would obtain for the same; that the aforesaid trade-mark L L applies to sheetings of four yards to the pound, a class of goods made by various manufacturers, but does not indicate any special quality or class of goods, in deponent's judgment, and also

in the acceptation of the trade, excepting as it indicates the superior quality of the product of the Lawrence Manufacturing Company.

Deponent further says that sheetings of four yards to the pound have been made for many years, and are now made, by other manufacturers, with various symbols and trade-marks; that the Atlantic Mills are making sheetings of the above description, stamped with the trade-mark "Atlantic P;" that the Agawam Mills are making the same, stamped with the device "Agawam F," and that the Pittsfield Mills have made the same under the trade-mark "Pittsfield A."

26 Deponent says that said four-yard goods are known to the trade and are called by the trade "Double L," and that the symbol or trade-mark L L appears on said goods as two capital L's; yet when pronounced to the ear is called "double L," and not L. L, pronounced singly.

And deponent further says that, in his opinion, the use of the capital L, with the word "double" printed across it in a manner proposed to be done by the Janesville Cotton Mills in its circular to the trade, would be simply an evasion and an attempt to avoid the effect that would follow the use of L L, and can be characterized, in deponent's opinion, simply as a trick of the trade.

CHAS. S. SMITH.

Subscribed & sworn to before me the 26th day of May, 1886.

CLINTON S. HARRIS,
Notary Public, Kings County.

Certif. filed in N. Y. Co.

Injunction Bill.

United States Circuit Court for the Western District of Wisconsin, to the July Term, 1886. In Chancery.

LAWRENCE MANUFACTURING COMPANY
vs.
JANESVILLE COTTON MILLS.

27 STATE OF MASSACHUSETTS, } *ss:*
City of Boston, County of Suffolk, }

Charles U. Thomas, of the State of Massachusetts, Suffolk county, in said State, deposes and says as follows: That he is a member of the firm of Bradford, Thomas & Co., importers and jobbers of dry-goods, in the city of Boston, and has been the buyer of domestic cottons for his firm; that the Lawrence Manufacturing Company make a kind of goods known by the trade-mark "L L;" that they have made them for many years.

That he has bought hundreds of bales of these goods; further, that if the goods had not borne the trade-mark "L L" he could not have sold so many, and therefore would not have bought as many.

That the Lawrence Manufacturing Company have a wide reputation for the excellency of these goods, and that when an ordinary

purchaser who knows the different qualities of sheetings asks for "L L" sheetings it is at once known that he means the goods made by the Lawrence Manufacturing Company.

That when the Lawrence Manufacturing Company first took the trade-mark "L L" for these goods there were a number of other mills which produced some of that general class of sheetings
28 which were known as four yards to the pound, which are known now and were then known under another trade-mark, such as the "Atlantic P," for example, and a number of others; he further believes that the ordinary buyer is in many cases deceived and made or induced to take goods made by other manufacturers, who have used the trade-mark "L L," when the buyer actually supposed he was buying the goods made by the Lawrence Manufacturing Company.

And affiant further deposes and says that in the trade the sheetings manufactured by the Lawrence Manufacturing Company of the said third general class and so stamped as aforesaid are known as "Double L" sheetings; that sheetings are bought and sold under that name, and the reputation of "Double L" sheetings so established under said trade-mark by the Lawrence Manufacturing Company as aforesaid is that such sheetings were made by the Lawrence Manufacturing Company, and that, for all intents and for all purposes, any sign, symbol, or signet which, when vocally pronounced, has the sound of "Double L" is precisely and exactly the same as the sign, symbol, or signet so constituting the trade-mark as aforesaid of the Lawrence Manufacturing Company, and that among the larger portion of jobbers, retail dealers, and consumers who are informed as to the different manufacturers in this country of sheetings of
29 such third general class the Lawrence Manufacturing Company's sheetings of said class are demanded, called for, and ordered as "L L" or "Double L" sheetings.

This affiant further says that the use as a stamp or label upon sheetings of the capital letter L, with the word "double" printed across said capital letter, is an attempt at a mere colorable evasion of said trade-mark; that goods so stamped would be called by the same name as would goods stamped with two capital letters "L L," and, for all practical and commercial purposes, would be the same as the literal appropriation and use of the two capital letters "L L," and would tend to deceive the public to almost, if not quite, the full extent as would such a literal appropriation of the use of the two capital letters "L L."

And further affiant saith not.

CHARLES U. THOMAS.

Subscribed and sworn to before me this 26 day of May, 1886, at the city of Boston, in the State of Massachusetts.

CHAS. HALL ADAMS,
Commissioner of Deeds for the State of Wisconsin,
Also Notary Public.

30 *Injunction Bill.*

United States Circuit Court, Western District of Wisconsin, to the July Term, A. D. 1886.

LAWRENCE MANUFACTURING CO.
vs.
THE JANESVILLE COTTON MILLS.

STATE OF ILLINOIS, } ss:
County of Cook, }

W. G. Rainey, being first duly sworn, deposes and says that he is a member of the firm of Raymond & Rainey, solicitors and of counsel for the complainant in the above-entitled cause, and also solicitors and of counsel for the complainant in the said suit of the Lawrence Manufacturing Company *vs.* Janesville Cotton Manufacturing Company; that this affiant was informed of the intention of the said Janesville Cotton Mills as set forth in the circular letter attached to the bill of complaint herein and marked as "Exhibit A" thereto; that thereupon this affiant wrote to George G. Sutherland, Esq., solicitor, etc., as per a copy of said letter hereto attached, marked "Rainey Exhibit," and duly mailed the said letter;
31 that this affiant received no reply thereto, and that for the purpose of avoiding further disagreement and litigation this affiant recently went to Janesville, Wisconsin, and by appointment had a conference with said Sutherland and with A. J. Ray, secretary of said Janesville Cotton Mills; that at said interview affiant referred to the aforesaid letter which he had written to said Sutherland, and asked if his information was correct that the said Janesville Cotton Mills intended to brand their sheetings in the manner set forth in the bill of complaint filed herein, and thereupon the said Ray answered in the affirmative, and produced and handed to affiant several circulars, one of which is attached to the bill of complaint herein as "Exhibit A," and stated to affiant that the said company did intend to so brand its four-yard sheetings, and that it had issued a great many of the circulars to the trade notifying them to that effect.

Affiant thereupon, representing the Lawrence Manufacturing Company, notified said Ray, as officer of said Janesville Cotton Mills, that, in affiant's opinion, the branding of the sheetings as indicated in said circular would be a violation of the stipulation and decree entered in the aforesaid cause against the Janes-
32 ville Cotton Manufacturing Company and in violation of the agreement of the parties made pursuant thereto, and in violation of the trade-mark rights of the Lawrence Manufacturing Company.

Affiant further stated that the said Ray, representing the said Janesville Cotton Mills, declined to refrain from so branding its four-yard sheetings, but, on the contrary, notified affiant that said company intended to brand said sheetings in the manner indicated in said circular; and further affiant saith not.

W. G. RAINEY.

Subscribed and sworn to before me this 31st day of May, A. D. 1886.

P. H. T. MASON,
Notary Public in & for the County, in the State Aforesaid.

RAINEY EXHIBIT.

LAWRENCE M'F'G CO. *vs.* JANESVILLE COTTON MILLS.

Law office of Raymond & Rainey, rooms 44, Honore Buildings.

CHICAGO ILLINOIS, *May 1st*, 1886.

Mr. Geo. G. Sutherland, Janesville, Wis.

33 DEAR SIR: We learn that the Janesville Cotton Mills propose after the 1st of July to stamp its 4-y'd sheetings with the following: "Double."

We submit that if this information is correct it will be in violation of the spirit, if not the letter, of the stipulation and decree in the Lawrence M'f'g Co. *v.* Janesville Cotton M'f'g Co.

We hope our information is incorrect, and if correct you will advise your clients to avoid such an evasion of the stipulation and decree.

We would not want to institute another suit to prevent this, but feel confident our client would instruct us to do so at once.

Please let us hear from you, obliging—

Very truly yours, RAYMOND & RAINEY.

Injunction Bill.

United States Circuit Court, Western District of Wisconsin, to the July Term, A. D. 1886.

LAWRENCE MANUFACTURING COMPANY
vs.
JANESVILLE COTTON MILLS.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

34 P. H. T. Mason, being first duly sworn, does depose and say that he is chief clerk in the office of Raymond and Rainey, Esquires, solicitors and of counsel for the complainant in the above-entitled cause; that he was fully familiar with the suit heretofore pending in this cause between said complainant and The Janesville Cotton Manufacturing Company, and assisted in the preparation of the papers and the conduct of said suit; that he has charge of the correspondence and law docket in the office of said Raymond and Rainey; that he has read the bill of complaint in this case to be filed, and that so far as the same pertains to such correspondence, negotiations, and prior proceedings he knows the allegations in said bill to be true.

This affiant further deposes and says that the paper hereto attached and marked "Mason's Exhibit A" is a true, full, and correct

copy of a letter received at the office of said Raymond and Rainey by mail from George G. Sutherland, Esq., solicitor for the defendant in said prior proceedings; that this affiant is familiar with the handwriting of the said Southerland and believes the said letter to be a correct report of the conclusions of the board of directors of
35 the said Janesville Cotton Manufacturing Company; further, that the paper hereto attached and marked "Mason Exhibit B" is a true, full, accurate, and correct copy of an engagement on the part of the said Janesville Cotton Manufacturing Company, its successors, etc., as therein stated, which engagement was forwarded to said Janesville Cotton Manufacturing Company by said Raymond and Rainey, and is the engagement or agreement referred to in the said letter "Mason Exhibit A;" further that the paper hereto attached and marked "Mason Exhibit C" is a true, full, and correct copy of a letter received by said Raymond and Rainey from said Sutherland as the attorney for the said Janesville Cotton Mills.

This affiant further deposes and says that the release of the Lawrence Manufacturing Company for all damages on account of the said piracy of its trade-mark, which release is referred to in said letter marked "Mason Exhibit A," and was in the words and figures as submitted to the said Janesville Cotton Manufacturing Company at the same time said engagement or agreement was submitted to that company, and which release and which agreement or engagement were both in form and substance accepted by said Janesville Cotton Manufacturing Company, was by this affiant, the same having been duly executed under the seal of said Lawrence
36 Manufacturing Company, duly delivered by mail to said Janesville Cotton Manufacturing Company; that the said stipulation and decree, as in the bill of complaint in this suit is alleged, was duly executed and filed, and that this affiant, thereupon believing the matter to be fully settled in good faith and the parties to be sufficiently and fully protected therein, neglected to ask for the formal evidence duly executed under the seal of the said Janesville Cotton Manufacturing Company of the said agreement so made as in accordance with the paper hereto attached and marked "Mason Exhibit B" until by the circular letter of the said Janesville Cotton Mills attached to said bill of complaint this affiant was informed of the dissolution of the said Janesville Cotton Manufacturing Company; but this affiant says that said agreement was by correspondence between the solicitors of the said parties duly made and entered into, subject only to the execution and delivery of said release, and that said release was duly executed and delivered.

And further affiant saith not.

P. H. T. MASON.

Subscribed and sworn to before me this 31st day of May, A. D. 1886.

WILLIAM W. ELLIOTT,
Notary Public.

37 MASON EXHIBIT A.

LAWRENCE M'F'G CO. *v.* JANESVILLE COTTON MILLS.

OFFICE OF THE
JANESVILLE COTTON MANUFACTURING COMPANY,
JANESVILLE, WIS., *April 3rd*, 1886.

Mess. Raymond & Rainey, Chicago.

DEAR SIRS: I was unable to get a meeting of the directors of the Janesville Cotton M'f'g Co. until this afternoon.

They have just authorized me to sign the stipulations as drawn, and they further authorized the president and secretary to sign the agreement drawn by you on receiving the release mentioned in your letter from the Lawrence M'f'g Co.

I have sent the original stipulation to the clerk of the court at Madison and enclose you a duplicate.

Yours, &c., GEO. G. SUTHERLAND.

38 MASON EXHIBIT B.

LAWRENCE M'F'G CO. *v.* JANESVILLE COTTON MILLS.

For and in consideration of the discontinuance by the Lawrence Manufacturing Company of Lowell, Massachusetts, of a suit now pending in the United States circuit court for the western district of Wisconsin against the Janesville Cotton Manufacturing Company, and in consideration of a release of all claims for damages for the infringement of the trade-mark of said Lawrence Manufacturing Company for brown sheetings by the use of the letters "L L," all in accordance with the stipulation in said case now made and executed, the said Janesville Cotton Manufacturing Company does hereby, for itself, its successors, both in said corporation and in said business, and for its assigns, covenant and agree to and with the said Lawrence Manufacturing Company, its successors and assigns aforesaid, not to use the label or trade-mark "L L" on any goods of its manufacture after the first day of July, A. D. 1886.

In witness whereof the said Janesville Cotton Manufacturing Company has caused these presents to be signed by its presi-
39 dent and its corporate seal to be hereto affixed, duly attested by its secretary, this 30th day of March, A. D. 1886.

MASON EXHIBIT C.

LAWRENCE M'F'G CO. *v.* JANESVILLE COTTON MILLS.

LAW OFFICE OF GEO. G. SUTHERLAND,
JANESVILLE, WIS., *May 22d*, 1886.

Mess. Raymond & Rainey, Chicago.

DEAR SIR-: Yours of the 19th at hand. I have consulted with the president & treasurer about the matters referred to in your letter

and they have directed me to do nothing about the matter until after July 1st.

Yours truly, GEO. G. SUTHERLAND.

Whereupon an order issued out of said court in words and figures following, viz:

Restraining Order.

40 United States Circuit Court, Western District of Wisconsin.

LAWRENCE MANUFACTURING CO.
vs.
THE JANESVILLE COTTON MILLS.

Now comes the complainant, by its solicitor, J. H. Raymond, Esq., and upon submitting the bill of complaint and the affidavits of Charles U. Thomas, Charles S. Smith, W. G. Rainey, and P. H. T. Mason, and the copies of documents and exhibits thereto attached, and it appearing to me that there is danger of irreparable injury to the complainant from delay, and that sufficient cause exists therefor, and complainant, upon said affidavits and exhibits and upon its bill of complaint, praying for a temporary restraining order, in accordance with the prayer of said bill, etc.:

It is ordered that the said defendant and its attorneys, agents, employés, and workmen be enjoined and restrained until the further order of this court from stamping, preparing to stamp, or advertising or announcing that they will stamp sheetings of the manufacture of the defendant with the letter "L" in connection
41 with the word "double," and from the use and from further preparing to use or advertising or announcing that it will use on sheetings any combination of the letters which, when either written or spoken, constitutes an imitation of the said trade-mark "L L."

And it is further ordered that the defendant appear and show cause why a preliminary injunction should not be granted, as prayed for in said bill of complaint, and that such motion shall be heard on Monday, June 21st, 1886, at ten o'clock a. m., or as soon thereafter as counsel can be heard, before me, in chambers, at the city of Madison, Wisconsin, and that copies of said bill of complaint and affidavits shall be served upon the defendant on or before June 5th, 1886, and any and all answers, affidavits, exhibits, and motion papers upon which said defendant may rely upon the hearing of said motion shall be served upon the firm of Raymond and Rainey by registered letter duly mailed to their office, 204 Dearborn street, Chicago, Illinois, on or before Monday 14th, 1886, and the said complainant shall file its affidavits and exhibits in rebuttal on or before the day of the hearing of said motion.

Ordered at said city of Madison by me, in chambers, this 1st day of June, 1886.

ROMANZO BUNN,
District Judge of the United States for the Western District of Wisconsin, Holding said Circuit Court.

42 Served on the within-named Janesville Cotton Mills, by delivering to A. J. Ray, secretary of said Janesville Cotton Mills, a copy of the within restraining order, June 4, 1886.

I also handed to said A. J. Ray a certified copy of bill of complaint & affidavits in this case.

F. W. OAKLEY,
U. S. Marshall.

Fees:

Service	2 00
Tr. ex.	3 40
Copy	1 20
	6 60
Services in delivering certified copies of bill, affidavit, &c., to def't	3 40
	$10 00

P'd by F. M. Stewart. 6, 5, '86.

And thereafter, to wit, on the 27 day of July, A. D. 1886, came said defendant, by its solicitors, and filed its answer herein as follows:

Answer.

43 Circuit Court of the United States for the Western District of Wisconsin.

The answer of the Janesville Cotton Mills, defendant, to the bill of complaint of the Lawrence Manufacturing Company, complainant.

The defendant, now and at all times hereafter, reserving to itself all and all manner of benefit and advantage which may be had or taken to the many errors and uncertainties and other imperfections in said bill contained, for answer thereto, or so much or such parts thereof as this defendant is advised is or are material or necessary for it to answer unto, answering, says:

That it admits that the complainant is a body corporate under the laws of Massachusetts and the defendant is a body corporate under the laws of Wisconsin.

That the complainant has been engaged in the manufacture and sale of sheetings; that it makes a grade or quality of which about two and eighty-five hundredths yards make a pound; that it makes a second grade of which about three yards make a pound, and a third grade or quality of which about four yards weigh a
44 pound, and the defendant alleges upon information and belief that it makes a fourth grade or quality of which about five yards make a pound.

And the defendant, further answering, admits that there are certain general characteristics, such as weight, which, with some variations,

are common to all manufacturers of said respective classes of sheetings, and that there are considerable differences of excellence in the goods manufactured by different manufacturers, but denies that there are great differences in the guarantees thereof, or that the age, experience, or financial responsibility of the several manufacturers have anything in particular to do with the character of the goods they manufacture, but avers that said goods are sold according to their intrinsic value and merit.

And this defendant, in further answering, denies that in the year 1867, or at any other time, the complainant became vested with the exclusive right to use the letters "L L" to distinguish sheetings of its manufacture from sheetings of the same general class manufactured by others; but, on the contrary thereof, avers that the said complainant stamped or branded upon each bolt of sheeting
45 manufactured by it a bull's head with the words "Lawrence Mills Sheeting" under the same in large, plain letters; that the said bull's head and the words "Lawrence Mills Sheetings" constitutes its trade-mark, which distinguishes the sheetings manufactured by the complainant from sheetings manufactured by others.

The defendant admits that it stamped on the grade or class of sheetings which it manufactured of about four yards to the pound the letters L L, but that said letters were so used by the complainant to distinguish only the grade, quality, or weight of said third class of sheetings which it manufactured.

And the defendant alleges that it used other letters upon each of the other classes of sheetings which it manufactured to distinguish the grade, quality, and weight thereof respectively, and not for the purpose of distinguishing the origin of their sheetings or to in any manner indicate by whom the same were manufactured; and the defendant, in further answering, denies that sheetings of the said third general class of the complainant's manufacture have come to be known as L L sheetings, or that L L on their sheetings import the excellent raw material or
46 the method and care of manufacture or the general guarantee of excellence or lasting quality of the sheetings manufactured by the complainant over those manufactured by others, or that when a consumer calls upon a retailer for "sheetings" it has been understood that such consumer desires sheetings manufactured by the complainant, or that it has become necessary for dealers generally to keep supplied with such sheetings made by complainant, or that a habit has grown up among any retail dealers to keep such a supply of complainant's goods on hand, but concealed, or to keep a supply of the goods manufactured by others in sight, or that any consumers are supplied with sheetings manufactured by others when they call for or desire those manufactured by the complainant.

And the defendant, further answering, admits that the said Janesville Cotton Mills was organized as a corporation in the month of April, 1886, but denies that it is in law or in fact the successor of the Janesville Cotton Manufacturing Company in any other sense than that it purchased the cotton mills and property of the said
47 last-mentioned company; that some of the stockholders and

officers of the Janesville Cotton Mills are the same as those of the Janesville Cotton Manufacturing Company.

And this defendant, further answering, admits that in the month of February, 1886, the complainant exhibited in this court a certain bill of complaint containing what is substantially set forth in said bill of complaint.

And this defendant, in further answering, upon information and belief, denies that in the trade the sheetings manufactured by the complainant of said third general class are known as "Double L" sheetings, or that sheetings are bought and sold under that name, or that the reputation of "Double L" sheetings has been established by the complainant, or that such sheetings so named have come to be known as of the manufacture of the complainant, or that any sign, symbol, or signet which when vocally pronounced has the sound of "Double L" is the same as the sign, symbol, or signet constituting the complainant's trade-mark, or that among any portion of jobbers, retail dealers, and consumers the complainant's sheeting- of said third class are demanded, called for, or ordered as "L L" or
48 "Double L" sheetings, or that in written orders sometimes the said two capital letters are written and sometimes the word "double" with one capital letter is written, but, on the contrary thereof, the defendant avers upon information and belief that all jobbers, retail dealers, consumers, and purchasers of cotton sheetings who want the goods manufactured by the complainant order the Lawrence sheetings using only the L L or the other letters with which the classes of goods manufactured by the complainant are respectively marked to designate the grade or quality which they desire to purchase.

The defendant, further answering, admits that the Janesville Cotton Manufacturing Company did not defend in the cause so instituted against it, but entered into the stipulation set forth in the bill herein, and that the decree therein set forth was also entered, but the defendant avers that said decree was not in accordance with nor in pursuance of said stipulation, inasmuch as said stipulation signed by the solicitors of the respective parties to said cause only provided that a consent decree discontinuing said suit, without the right of appeal, should be entered therein; and the defendant denies upon information and belief that the said Janesville Cotton Manufacturing Company executed or agreed to execute the
49 agreement mentioned and referred to in the bill of complaint herein.

And the defendant, further answering, alleges that at the time the said stipulation was signed and said decree entered the said Janesville Cotton Manufacturing Company was about to abandon the manufacture of *of* cotton cloths and to go into liquidation and wind up its affairs, and that it would have no further occasion to use the letters "L L" after the first day of July, 1886; that it has since disposed of all its property, rights, and privileges to the defendant and has abandoned the business of manufacturing cotton sheetings; has wound up its affairs and been dissolved; that the defendant is a wholly distinct and separate corporation from the

said Janesville Cotton Manufacturing Company; was not a party to the said suit; is not bound by the said stipulation or decree nor by any other stipulation, agreement, or obligation entered into or assumed by the said Janesville Cotton Manufacturing Company.

And the defendant, further answering, admits and states that at and since the time it has commenced the manufacture of cotton sheetings it adopted the brand, trade-mark, and label for its
50 sheetings, printed in large and plain letters upon each bolt by it manufactured, the words Badger State R *Badger State R*, with the word double written across it, Badger State L, with the word double written across the L, as stated in said circular; that the words Badger State indicate the origin and mills at which said sheetings were manufactured; that the "R" "double" "double" indicate and inform the public as to the grades and weight of sheetings manufactured by it respectively; that said stamps or brands upon the sheetings manufactured by the defendants are not an imitation of the brand or stamp upon the sheetings manufactured by the complainant, and are not in anywise calculated to deceive or mislead the purchasers of cotton sheetings or to induce any one to believe that they are buying the sheetings manufactured by the complainant instead of those manufactured by the defendant; and the defendant, further answering, upon information and belief, alleges that the Atlantic Company, a corporation organized and existing in Massachusetts, have used the letters L L upon sheetings manufactured by it since the year 1862 and still use the same; that the Janesville Cotton Manufacturing Company have used the said letters L L
51 upon sheetings manufactured by it from 1874 down to February, 1886, without any objection made by or interference or hindrance of the complainant, a period of more than eleven years, when the complainant commenced the suit mentioned in the bill herein; that for many years past there have been manufactured and sold cotton sheetings by the various manufacturers of the country stamped and branded with the letters L L, among others the Albany L L, Beaver Dam L L, Buckeye L L, Clarion L L, Chicago L L, Indiana L L, Pacolet L L, Victoria L L, Wisconsin L L, Aurora Cotton Mills L L, Tennessee L L, Crescent City L L; but that upon all of said cotton sheetings so respectively manufactured there is stamped and branded upon each bolt of sheeting words which indicate and inform the public of their origin and mills by which they are respectively manufactured; that the said letters L L stamped upon said sheeting only indicate and inform the public of the grade or weight of goods upon which the said letters are stamped; and the defendant denies that the said complainant has acquired any exclusive right, property, or interest in the said letters L L or in the right to use the same; that the only office the
52 same perform is, as stated aforesaid, to indicate the quality or grade of goods upon which they are stamped.

And this defendant, further answering, denies that the complainant is entitled to the relief or any part thereof in said bill demanded, and prays the same advantage of this answer as if it had pleaded or demurred to said bill of complaint, and prays to be hence dis-

missed with its reasonable costs and charges in this behalf most wrongfully sustained.

UNITED STATES OF AMERICA,
Western District of Wisconsin, } *ss:*

Henry Palmer, being first duly sworn, deposes and says that he is the president of the Janesville Cotton Mills, defendant herein; that he has read the foregoing answer to the bill of complaint of the Lawrence Manufacturing Company, complainant herein, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated upon information and belief, and as to those matters he verily
53 believes the same to be true.

HENRY PALMER.

Subscribed and sworn to before me this 26th day of July, 1886.

GEO. G. SUTHERLAND,
Notary Public, Rock Co., Wis.

And thereafter, and on the 29 day *day* of November, A. D. 1886, came the parties, by their solicitors, and filed stipulation as follows:

54–451 *Stipulation.*

Circuit Court of the United States, Western District of Wisconsin.
In Chancery.

LAWRENCE MANUFACTURING COMPANY
vs.
JANESVILLE COTTON MILLS.

In this cause it is stipulated that the complainant shall have until the 15th day of January, 1887, in which to close its *prima facie* case, and that the defendant shall have thirty days thereafter to give testimony in its behalf.

November 29th, 1886.

RAYMOND & RAINEY,
Solicitors for Complainant.
I. C. SLOAN,
Solicitor for Defendant.

* * * * * * *

451*a* *Testimony Specially Taken in Case Against Janesville Cotton Mills.*

452 United States Circuit Court, Western District of Wisconsin.
In Equity.

LAWRENCE MANUFACTURING COMPANY
vs.
JANESVILLE COTTON MILLS.

Depositions taken on this third day of January, 1887, at Janesville, Wisconsin, before me, Francis C. Grant, a notary public in and for the State of Wisconsin, residing in Rock county, in said State, at my office in the city of Janesville, on behalf of complainant, in the presence of W. G. Rainey, Esq., representing complainant, and I. C. Sloan, Esq., representing defendant, all formalities as to caption and certificate being waived.

A. J. RAY, being duly sworn, testified:

Q. 1. State your name, age, residence, and occupation.

A. A. J. Ray; Janesville; age, 65; occupation, secretary of the Janesville Cotton Mills.

Q. 2. How long have you been secretary of the Janesville Cotton Mills?

A. I have not been secretary all the time I was here; I should think about nine years.

Q. 3. I said the Janesville Cotton Mills. How long have you been secretary of the Janesville Cotton Mills?

A. Since the organization of the company, the twenty first or second of April, 1886.

453 Q. 4. What were you doing previous to your becoming secretary of the defendant company?

A. I was the managing agent of the old company, eleven years, certainly—that is, the Janesville Cotton Manufacturing Company.

Q. 5. Were you not also secretary of the old company; and, if so, for how long?

A. I was secretary of the Janesville Cotton Manufacturing Company for ten years. I think the first year Mr. Lawrence was secretary.

Q. 6. Give the names of the officers of the old company at the time of its dissolution.

A. W. A. Lawrence was president; E. C. Smith, vice-president; F. S. Eldred, treasurer; A. J. Ray, secretary.

Q. 7. Now give the names of the directors, if you please.

A. In addition to those names I have given, Wm. Macloon, L. N. Williamson, W. C. Heller, George G. Sutherland, E. W. Fisher, James Shearer.

Q. 8. Give the names of the officers and directors of the present company.

A. Henry Palmer, president; Geo. G. Sutherland, vice-president; F. S. Eldred, treasurer; A. J. Ray, secretary; E. C. Smith, director;

Fenner Kimball, H. Richardson, James Shearer, E. W. Fisher, William Macloon. I think I omitted the name of Dr. Palmer in the old company.

Q. 9. When was the old company dissolved?

A. I don't know as it has been dissolved.

Q. 10. Is it still in existence and doing business as a cotton manufacturing company?

A. No, sir.

Q. 11. When did it cease manufacturing cotton goods?

A. The 21st day of April, 1886.

Q. 12. The same day that the new company began manufacturing cotton goods?

A. Yes, sir.

454 Q. 13. You know of a suit brought by the Lawrence Manufacturing Company against the old company, do you not?

A. I have knowledge of that fact; yes, sir.

Q. 14. Who represents the old company in that case?

A. George G. Sutherland, an attorney of Janesville, director of the old company.

Q. 15. He is also now vice-president of the new company, is he not?

A. He is.

Q. 16. Is it not true that he was authorized by the old company to represent it in that case as its solicitor?

A. Yes.

Q. 17. Whatever he did in that case as the solicitor of the old company was done with the approval and knowledge of the officers and directors of that company, was it not?

(Objected to by defendant as leading and incompetent.)

A. I think he did.

Q. 18. Were you not, as secretary of the old company, informed by him of the stipulation and of the consent decree and of the agreement he made in that case on behalf of the old company?

(Objected to as leading and incompetent.)

A. I think we were informed of everything he did in relation to that matter.

Q. 19. You knew at the time that a decree was entered authorizing a perpetual injunction against the old company from stamping double L on goods of its manufacture after the first day of July, 1886?

A. I don't know about the word "perpetual;" I think I understood that there was a decree of that nature.

Q. 20. Was there a meeting of the directors called of the old company at which the action of Mr. Sutherland with reference to the proposed stipulation, agreement, and decree to be executed in that case were discussed?

455 (Objected to as leading and incompetent and not calling for the best evidence.)

A. I can't say that there was a meeting called especially for that purpose, but it was discussed in board meeting.

Q. 21. Was there any record made of this meeting and of the action of the directors on this point, and will the minutes of the old company show such action?

A. I can't tell what the action was, but if any action transpired the minutes will show it.

Q. 22. Is it not a fact that there was action taken by the directors of the old company in this matter?

A. There was action taken, but I can't tell what it was.

Q. 23. And whatever action there was taken is recorded in the minutes of the old company; is that correct?

A. I should think the records would show all the transactions of the board.

Q. 24. You kept the records of the proceedings of the directors of the old company, did you not and have you them in your possession now?

A. I did, and I have them in my possession now.

Q. 25. Will you produce for examination, at the taking of your deposition, the books containing the record of the meetings of the old company in so far as they show what action was taken by its directors with reference to the old suit of the Lawrence Manufacturing Company against the Janesville Cotton Manufacturing Company?

A. I will, if necessary.

(Witness sends for records.)

Q. 26. You are the same A. J. Ray who made an affidavit in the present suit to be used on the motion to dissolve the temporary restraining order, are you not?

A. I am; yes, sir.

Q. 27. By whom was that affidavit prepared?

A. By the solicitor of the company, Mr. I. C. Sloan.

Q. 28. Did he prepare that affidavit from information given by you to him?

A. Well, I suppose so.

456 Q. 29. Are all the facts in that affidavit true?

(Objected to as incompetent, as being too general, and because, if the counsel desired testimony in regard to any particular fact in that affidavit, he should call the witness' attention to it and not ask him by wholesale, and his counsel instructs the witness that he need not answer the question.)

A. I can't remember what was in it now.

Q. 30. Before you signed that affidavit was it not read over to you or read by you?

A. It was.

Q. 31. At the time you signed it and swore to it you supposed or believed the facts therein stated to be true, did you not?

A. I did.

Q. 32. In a copy of said affidavit furnished to the solicitors for the

complainant by the solicitors for the defendant are these words: "That since said year 1875 he has been the secretary and managing agent of the Janesville Manufacturing Company up to about the 1st of April, 1886, at which time the Janesville Cotton Mills were organized and succeeded, by conveyances duly executed by the Janesville Cotton Manufacturing Company, to all the rights, privileges, and immunities of the said last-named company;" that is correct, is it not?

(Objected to as not a proper method of proving facts in this case and as otherwise incompetent.)

A. It is correct, unless there is some error in date.

Q. 33. Further on in said affidavit are the following words: "Defendant insists that it has the right to use the letters L L simply on the cotton sheetings it manufactures as the assigns and successors of said Janesville Manufacturing Company under the stipulation on which said decree mentioned in said complaint was entered until the first day of July next." Were the statements made in this quotation correct?

457 (Objected to on the ground that the paragraph quoted from the affidavit does not purport to be a statement of facts, but only a claim of what the rights of the Janesville Cotton Mill was; that the question does not call for any proof of fact; if it did, the counsel has adopted an improper and incompetent method of proving it, and that the question is incompetent otherwise and extremely improper.)

A. I think they were true.

Q. 34. It is also stated in said affidavit "that by the stipulation made between the attorneys for the said Lawrence Manufacturing Company and the said Janesville Manufacturing Company the right on the part of the latter company to use the letters L L on the sheetings manufactured by it and its assigns was expressly reserved until the first day of July, 1886, and as the assigns and successors of the said company the defendant has a right to use the same." These statements were correct at the time, as you understood them, were they not?

(Objected to on the same grounds as the question last before.)

A. They were correct.

Q. 35. Is it not true that the Janesville Cotton Mills, the defendant in this case, succeeded to all and became possessed of the property of the old company, the Janesville Cotton Manufacturing Company, including the mills, machinery, and properties of all kinds belonging to the old company?

(Objected to as calling for an answer of mixed opinion and fact, which is incompetent, and that it is incompetent for the witness to answer.)

A. I think that is true.

Q. 36. Is it not true?

A. It is.

The witness here produces the record book of the proceedings of the board of directors of the Janesville Cotton Manufacturing Company, and by agreement of parties it is stipulated that the
458 notary may copy herein the entries on page 422 of said book in the words and figures following, to wit, subject to the objection that it is incompetent and immaterial evidence:

"Special meeting of the board of directors, called by the president, and held at the office of this Co., April 3, 1886, 3.30 p. m.

"Present: Wm. A. Lawrence, E. C. Smith, F. S. Eldred, George G. Sutherland, William Macloon, Jas. Shearer, and A. J. Ray, H. Palmer.

"Matters pertaining to the suit brought against our company by the Lawrence Manufacturing Company for infringement of their right in the use of the stamp L L on our sheetings were explained by Mr. Sutherland, and, on motion of Mr. Eldred, Mr. Sutherland was authorized and instructed, as our attorney, to sign the stipulations agreed upon by the attorneys of the Lawrence Manufacturing Company and Mr. Sutherland in behalf of the Janesville Cotton Manufacturing Company.

"On motion, Mr. Sutherland was instructed to notify the attorneys of the Lawrence Manufacturing Company that the president and secretary of the Janesville Cotton Manufacturing Company will execute, under the authority of its board of directors, the agreement to discontinue the use of said L L stamp whenever the Lawrence Manufacturing Company shall sign a formal release, duly executed, of all claims for damages, etc., against the Janesville Cotton Manufacturing Company for the use of said L L stamp.

"The business of the meeting being completed, the meeting, on motion, adjourned *sine die.*

"A. J. RAY, *Secretary.*"

Further extracts are taken from the same minute book by consent, which appear in Exhibit A to this deposition.

Counsel for complainant also offer in evidence a certified
459 copy of article 7 of the Articles of Association of the Janesville Cotton Mills, attested on the 16th day of June, 1886, by Ernst G. Timme, as secretary of state, as Exhibit B to this deposition.

Q. 37. Is it not true that immediately after the dissolution of the old company the new company was organized, the defendant in this case, in pursuance of the resolutions passed at the directors' and stockholders' meetings, from which quotations have been made in your hearing, embodied in Exhibit A?

A. It is.

Q. 38. And is it not also true that practically all the stock of the old company was merged into the stock of the new company by the old stockholders subscribing for the stock in the new company in the manner provided for in the resolution adopted at the stockholders' meeting of the old company?

A. It is.

Q. 39. Is it not also true that since the organization of the new company it has continued to manufacture at Janesville, Wis., in the same mills occupied by the old company, the same class of cotton goods made by the old company?

A. It is.

Q. I now show you what purports to be a printed circular issued by the Janesville Cotton Mills, which I ask to be indorsed as Exhibit C to your deposition. Please state what it is.

A. I should call it a circular letter issued by the Janesville Cotton Mills.

(Complainant offers paper in evidence as Exhibit C to this deposition.)

Q. 41. Please state how the old company branded its cotton goods.

A. Our four-yard goods, "Badger State sheeting," with monogram in center, J. M. Co., and letters L L; and also "Badger State sheeting," same monogram, and R and R R, two grades.

Q. 42. Those branded with R were known as the Badger State R's, were they not?

A. Yes, sir.

460 Q. 43. And those branded with R R as the Badger State double R's, were they not?

A. As the Badger State R R; two R's on it.

Q. 44. Were they not called double R's?

A. Yes.

Q. 45. Those branded with two L's were known as double L's, were they not?

A. Yes; I think so.

Q. 46. Who suggested the use of the letters L L on your four-yard sheetings?

A. Well, I can't tell positively.

Q. 47. Have you no idea who it was?

A. If your question means who suggested it to the company, I suggested it myself.

Q. 48. Before you went into the service of the old company as its secretary and manager, is it not true that you had had experience in the manufacture of cotton goods; and, if so, where?

A. I had some experience in manufacturing cotton goods in North Adams, Mass.

Q. 49. Before you came to the Janesville Company, the old company, you knew of double L sheetings manufactured by the Lawrence Manufacturing Company, did you not?

(Objected to as leading and immaterial.)

A. I can't say that I did, sir.

Q. 50. Will you swear that you did not know of L L sheetings made by the Lawrence Manufacturing Company before you came to the Janesville Company?

A. Yes.

Q. 51. Why did you suggest to the old company the stamping of double L on its four-yard sheeting?

A. Don't know as I can tell exactly what led me to do it. I suggested it to indicate a grade of the goods, after having decided to make four-yard goods. We didn't make four-yard goods at first.

Q. 52. Is it not true that when you commenced to make four-yard goods you branded them with double L?

A. I think we branded them all double L—four-yard goods.

461 Q. 53. Double L meant then, as it does now, in the trade, brown sheetings of four yards to the pound, did it not?

A. It did with us.

Q. 54. And is it not true that you adopted the use of double L on your sheetings so that the trade might understand that they were of four yards to the pound?

A. It is a fact that we adopted that brand to indicate four-yard goods to ourselves. I don't know how the trade would consider it. I don't know as we had any reference to that.

Q. 55. After the new company was organized, and between April 21, 1886, up to July 1, 1886, did it stamp any of its four-yard sheetings with the letters L L?

A. I think we did, sir.

Q. 56. Is it not true that the new company considered itself entitled to use L L on its four-yard sheetings, as the successor of the old company, up to July 1, 1886?

A. Yes.

Q. 57. Did it sell any of its goods after July 1, 1886, which were made before July 1st that were branded with double L or L L?

A. I think not. I think we were sold up close.

Q. 58. Did you deliver, after the 1st of July, 1886, any goods that were made previous thereto and branded with L L?

A. My recollection is that we were sold up close; that we carried no goods over of that brand, L L.

Q. 59. Do you mean that the new company did not put into the market after the 1st of July, 1886, any four-yard sheetings branded with double L, which sheetings had been manufactured previous thereto?

A. Why, I have answered that three times.

Q. 60. Since the 1st of July how has the new company been stamping its four-yard sheeting?

A. With the same "Badger State sheeting," with the mon-

462 ogram and the letter L, with the word "double" across, as represented on the circular Exhibit C, and also on Exhibit B to Bailey's deposition.

Q. 61. Can you state the first time when the new company branded its four-yard sheeting like Exhibit B, Bailey?

A. It was several days before the 1st of July; in the latter part of June.

Q. 62. If I understand you correctly, then, the new company, after the 21st of April, 1886, when it succeeded the old company, continued to brand its four-yard sheetings in the same manner as the old company did until within a few days prior to the 1st of July, when it made the change like Exhibit B, Bailey; is that correct?

A. It is.

Q. 63. Who suggested the change to the new company?

A. I suggested it.

Q. 64. Why did not the new company continue to brand its four-yard sheeting in the same manner that the old company did?

A. We thought it would be a good thing to have a distinct brand of our own.

Q. 65. You knew and understood that, under the decree in the old case, you could not, after the 1st of July, continue branding your four-yard goods with double L, did you not?

(Objected to as calling for a legal opinion and not for facts.)

A. It was talked over and understood that we were to give up the use of the double L.

Q. 66. That was in pursuance of the stipulations and agreement and decree which had been made by Mr. Sutherland in the old case, under authority from the board of directors of the old company, was it not?

A. Yes.

Adjourned to 9 a. m. to-morrow.

463 JANUARY 4, 1887—9 a. m.

Taking of deposition resumed.

All parties present.

By stipulation it is agreed that the remainder of the deposition of Mr. Ray shall be taken in short-hand and by the officer written out on the type-writer, the signature of the witness being waived.

Questions 65 and 66 read to witness by Mr. Sloan.

WITNESS: On reflection, perhaps, I ought to change my testimony governing those last two questions. Now, what was my answer to those last two questions?

Questions 65 and 66 read again.

WITNESS: Now, I don't understand exactly the drift of that question, "under the authority of the board of directors." I would like to understand the question and I can answer it. What does that mean?

Q. 67. Have you had a talk with Mr. Sloan since the adjournment yesterday afternoon with reference to your answers to those two questions?

A. He merely asked me at the head of the stairs there if I understood that question and my answer to it; that is all the talk I have had with him.

Q. 68. Now, isn't it a fact that you changed your brand from the two L's to one L, with the word "double" printed across it, for the purpose of preserving whatever benefit there was in the trade by using double L on four-yard goods?

A. We adopted that new brand to make it as distinct from everything else as we could possibly.

Q. 69. And yet to preserve the benefit of having double L on your sheetings?

A. Well, for the benefit of L L on the sheetings—I don't see how that could benefit us; I don't understand.

Q. 70. What is it you don't understand?

A. I don't say that we adopted that to preserve any special benefit that we gained by the use of the double L formerly.

464 Q. 71. You won't say that you didn't adopt it for that purpose?

A. I say that we adopted it as a distinct brand to represent our goods without reference to anything else.

Q. 72. And yet you wanted to preserve double L on your sheetings; is not that true?

A. It never had been on the sheetings in that form—double L.

Q. 73. That may be true—that in the form you now use it—it was never on previously, but yet you did put it in the present form for the purpose of preserving double L on the sheeting, did you not?

A. Well, I can't say that we did.

Q. 74. Will you say that you did not?

A. I can't say that that question was taken into account at all.

Q. 75. Will you say that you didn't think of it when you suggested the present brand?

A. I can't say that I didn't think of it.

Q. 76. Well, didn't you think of it?

A. I can say this, that we intended to get up something entirely different from any other concern—have a distinct brand of our own, so as not to interfere with anybody; that was our expectation and intention.

Q. 77. But yet you wanted to preserve it by having it distinct to the eye—by having it as nearly as possible the same in sound as the old brand of double L was pronounced; isn't that true?

A. I can't tell exactly whether that entered into the question or not.

Q. 78. Will you say it didn't enter into the question?

A. I can't say that it didn't.

Q. 79. Now, isn't it a fact, Mr. Ray, that you frequently received orders sent to the old company for so many pieces of double L sheetings?

A. Without anything else, do you mean; simply double L sheetings?

Q. 80. Simply double L sheetings.

A. No, sir; I never received such an order in my life.

465 Q. 81. Do you receive such an order now?

A. No, sir.

Q. 82. How are your orders sent?

A. Frequently they are sent L L now—some "double" and some "L L," but they are coupled with the "Badger State" always. We never received an order for simply "double L's" without the "Badger State."

Q. 83. Sometimes now you receive an order for "Badger State L L" sheetings?

A. Yes, sir.

Q. 84. And you fill that order with your Badger State with the L with "double" printed across it?

A. Yes, sir.

Q. 85. You understand and the trade understands that it means the same brand of goods, whether they come with two L's or with one L with "double" printed across it?

A. I haven't any doubt about that—that they understand that it is the same sheeting.

Q. 86. Isn't it true that you adopted your present brand—the single L with "double" printed across it—in order to preserve whatever benefit the old company had built up in the trade by stamping the two L's on sheeting?

(Witness hesitates.)

Q. 87. Why do you hesitate to answer?

A. I don't know about it; I don't understand that that was the principal reason that we adopted it; I don't think so.

Q. 88. Was it any of the reasons why you adopted it; did it enter into your consideration at all?

A. It must have entered into the consideration more or less—it must have.

Q. 89. Do you remember a visit that I (W. G. Rainey, Esq.) paid to your company some time in June, 1886, possibly in July, before you put your present brand upon your goods, but after you had sent out your circular, Exhibit C, to the trade?

A. I remember your being there; yes, sir.

Q. 90. Do you not remember that at an interview I had with you at that time that I suggested to you that it was my
466 opinion that should you brand your four-yard sheeting in the manner proposed by Exhibit C that it would be in violation both of the spirit and of the letter of the stipulation and agreement entered into between the Lawrence Manufacturing Company and the old company and in violation of the decree entered in pursuance of those stipulations made with your company?

(Objected to as leading, incompetent, and immaterial.)

A. Yes, sir; I remember.

Q. 91. At that time is it not true that you had sent to the trade the circular Exhibit C?

A. I can't answer that. I did send the circulars, whether it was previous to that or afterward; we sent the circulars to the trade some time.

Q. 92. And it was after that interview that you branded your four-yard sheeting with the L and the word "double" printed across it?

A. Yes, sir.

Q. 93. Isn't it true that the present company is, to all intents and purposes, the successor of the old company?

A. I think there can be no doubt about that, sir.

Q. 94. Do you remember the special meeting of the directors of

the old company, held April 3, 1886, the proceedings of which have been copied into your deposition?

A. I remember of such a meeting.

Q. 95. Do you remember what papers were submitted to the directors at that meeting—what they were and their import?

A. I don't remember that there were any papers presented.

Q. 96. Where were papers discussed at the meeting of the board?

A. There were questions discussed, but I don't remember that there were any papers.

Q. 97. The discussion had reference to a stipulation and agreement with Mr. Sutherland that had been agreed upon between him and the attorneys for the Lawrence Manufacturing Company.

467 A. I will answer in the language of those records; that is my remembrance of the whole thing.

Q. 98. These records would not have been written as they were if it hadn't been true that there were stipulations and agreements discussed at that time; isn't that correct?

A. Probably not; they would not have been written if there had not been something to base them upon.

Q. 99. Won't you say positively it would not have been written if such stipulation and agreement had not been discussed?

A. Papers and questions are two different things. If there is no legal difference between the two I can answer; if there is, I can't. I want to answer that correctly.

Q. 100. You wrote the minutes?

A. Yes, sir.

Q. 101. They were true at the time?

A. Yes, sir.

Q. 102. They refer to an agreement and stipulations, and if they hadn't been before the board of directors you would not have made a record of them?

A. They were talked of, but I have no recollection of their being befor the board of directors.

Q. 103. Have you in your possession, as secretary of the old company or of the new company, any such papers?

A. I have not.

Q. 104. Isn't it true that at the time of this meeting of April 3, 1886, and at the time the stipulations referred to therein were authorized by the board of directors to be executed, and at the time they were executed, and at the time the decree was entered in the old case, it was then contemplated to dissolve the old company, to organize a new one, and was not such a change in process of being carried out?

A. I am not positive about dates, but there was such a thing in contemplation, sir—a movement being made in that direction.

468 Q. 105. Who paid Mr. Sutherland for his services in the old case and for the old company?

A. I don't know certainly that he has been paid.

Q. 106. Did the old company pay him?

A. I don't think they have.

Q. 107. Has the new company paid him anything?

A. I could not say positively whether the new company has paid him anything or not. They have not paid him unless they have paid him during the month of December, and I have not got my books written up to December. They had not paid him anything up to that time.

Q. 108. Is not the obligation recognized to be a valid one against the new company?

A. I cannot answer that question; that is a legal question; I am not a lawyer.

Q. 109. In your answer to questions 49 and 50 you have stated in substance that previous to your coming to Janesville you knew nothing about double L sheeting manufactured by the Lawrence Manufacturing Company. How soon after you came to Janesville did you know of such goods?

A. Very soon afterward.

Q. 110. You did know of such goods before you adopted the use of the double L on your four-yard sheeting, did you not?

A. Yes, sir; I did.

Q. 111. Is it not true that at the time you adopted the use of double L on your four-yard sheeting you expected such goods to go into the market in competition with the double L sheeting manufactured by the Lawrence Manufacturing Company?

A. I don't know as we had any such expectations. We made goods expecting to sell them.

Q. 112. You knew they were to be put into the market in competition with double L sheeting made by the Lawrence Manufacturing Company?

A. We knew they were to go into the market in competition with other four-yard sheetings if they were sold.

469 Q. 113. When you adopted your present brand of L, with "double" printed across it, you knew that such goods would go into the trade in competition with double L sheetings made by the Lawrence Manufacturing Company?

A. I don't know as to that.

Q. 114. You knew the Lawrence Mills were in the market, did you not?

A. Yes, sir.

Q. 115. And you knew their goods were sold largely in the market?

A. I did not know—I could not know positively that the same housee would sell them. I didn't know whether they would come into competition or not; I didn't know anything about it until I had tried it. I could not know such a thing positively.

Q. 116. Didn't you know then that your double L's would come into competition with the double L's manufactured by the Lawrence Manufacturing Company?

A. I supposed they would be sold as four-yard sheetings beside other four-yard sheetings.

Q. 117. Including the Lawrence?

A. Yes, sir.

Q. 118. Has your company ever sold its double L sheetings to its

customers on what is known as memoranda, the price to be fixed at a future time by the then market price of such goods?

A. We have done such a thing—not this present brand; we have not had occasion to since we started up anew. We occasionally put out old goods on memoranda in dull seasons.

Q. 119. Why was that done?

A. Because the market prices were soft and the trade refused to take goods at the regular price, thinking perhaps that the price would be lower. Sometimes it turned out to be lower and sometimes higher.

Q. 120. Have you ever sold your double L's to your customers with special reference to the prices upon the Lawrence double L sheetings?

A. Ever, you mean?

470 Q. 121. Yes.

A. Well, we have uniformly followed Eastern prices.

Q. 122. Fixed by the Lawrence Mills?

A. I don't know as they were fixed by the Lawrence. When the prices advanced in the East we have always followed them, whether they were Lawrence or Atlantic P's or any other; they generally go up together.

Q. 123. Whatever price the Lawrence double L's may be in the market in the East you sell your goods to your customers here in the West at the same figure; is that true?

A. Our prices generally conform to Eastern prices. We have generally got as much for our goods as they got for theirs.

Q. 124. Do you know the handwriting of George G. Sutherland, the attorney of the old company in the old suit, and your present vice-president? And, if so, look at letters I now hand you, dated April 3, 1886, May 6, and May 22, and state whether they are in the handwriting of Mr. Sutherland.

A. I should say they were all written in his hand, with his signature.

(Letters marked by the notary with his name for future identification.)

Q. 125. Your interests in this lawsuit are adverse and antagonistic to those of the Lawrence Manufacturing Company, are they not?

A. I suppose they are, sir.

Q. 126. Don't you know they are?

A. Well, I have an interest in this institution here, and any suit against it, of course, would be against my interests.

Cross-examination by Mr. SLOAN:

Q. 127. The counsel for the complainant put some questions to you, in which were contained extracts from an affidavit made by you in the present case to dissolve a temporary restraining

471 order in said case. Said affidavit contains, in addition to what the counsel quoted in his question, the following:

"And this deponent further says that the letters 'L' as used by the complainant and the defendant were intended to designate a

certain class, weight, and quality of their goods manufactured by them, respectively, and has no relation whatever to the origin or company who manufactured said goods, and that the letters 'L L' form no part and have no connection with the trade-mark of the said complainant, but that the words 'Lawrence Mills,' branded on said sheeting manufactured by them, together with the bull's head or bull rampant, constitute the trade-mark of the said complainant."

Is that correct?

(Objected to as not proper cross-examination and as immaterial and incompetent.)

A. Yes.

Q. 128. Said affidavit also contains, following a quotation made in one of the counsel for the complainant's questions, the following:

"And generally insists upon its right to use the same," referring to L L, "if it so chooses, because the complainant has no right or property in said letters as a trade-mark."

Is that correct?

(Same objection.)

A. I think so.

DEFENDANT'S COUNSEL: The defendant offers in evidence the whole affidavit referred to by complainant's solicitor, and asks to have it marked "Defendant's Exhibit 1."

The counsel for the defendant, in putting his questions to the witness, used and read from the copy of said affidavit in possession of said complainant's counsel, and from which he put his questions and quoted. The counsel for the defendant now offers in
472 evidence said copy of the affidavit, to which the complainant's counsel objects on the ground that the copy which was used by both counsel, respectively, belongs to him, and that defendant's counsel has no right to attach it as an exhibit without the consent of the counsel for the complainant; and, further, because this is not the proper time for the defendant to make the proof, and if the original or a copy of said affidavit is competent at all it should be offered by the defendant at the proper time; and also further because the original of said affidavit is incompetent and irrelevant, and not the proper way for the defendant to make the proof.

Whereupon it is agreed between the counsel that the original affidavit, as used before the court, may be annexed as an exhibit, in lieu of said copy, subject, however, to all objections on the part of complainant's counsel.

Q. 129. When did the Janesville Cotton Manufacturing Company commence stamping the letters "L L" on their cotton sheeting?

(Objected to as incompetent and irrelevant.)

A. I should say in the fall of 1875.

Q. 130. How long did that company continue to sell its cotton sheetings with L L stamped upon them?

(Same objection.)

A. Up to the time that the property changed hands.

Q. 131. Did that company make more than one grade or quality of sheeting?

(Same objection.)

A. It did.

Q. 132. Were the other qualities stamped with any letters; and, if so, what?

(Same objection.)

A. We made a grade of sheeting stamped "R," and another stamped double R.

473 Q. 133. What was the weight and count of those sheetings?

(Same objection.)

A. The R was 64 square, the double R 56–64. Their respective weights were 3.40 and 3.75 yards to the pound.

Q. 134. What did L L stamped upon your sheeting designate?

(Same objection.)

A. It designated the weight of the goods.

Q. 135. What was stamped upon your sheetings to indicate by whom they were manufactured?

(Same objection.)

A. "Badger State sheetings," with a monogram in the center, consisting of the letters "J. M. Co."

Q. 136. On the Lawrence sheetings what did the letters "L L" designate?

A. How can I tell? To me?

Q. 137. Yes; what did you understand them to designate?

A. To me they designated four-yard sheetings.

Q. 138. What was the stamp on the Lawrence sheetings to indicate by whom they were manufactured?

A. "Lawrence Manufacturing Company," or "Lawrence Mills." I think they were at one time branded "Lawrence Manufacturing Company," but I am not positive.

Q. 139. How are they now branded?

A. "Lawrence Mills."

Q. 140. Were they so branded in large plain letters?

A. In a solid letter; it is not a large letter.

Q. 141. That is comparative; it would be large compared with the print in a newspaper, wouldn't it?

A. Oh, yes; yes.

Q. 142. The Lawrence L's were solid?

A. Yes, sir; a very prominent letter.

474 Q. 143. What were your letters in reference to that; were they open letters?

A. Yes, sir.

Q. 144. Do you think that it is possible that anybody in the wholesale or retail trade in cotton sheetings could suppose that goods stamped as yours were were manufactured by the Lawrence Manufacturing Company?

A. I don't think the thing is possible.

Q. 145. Did you apply for a copyright upon the brand which you stamped upon your sheeting?

(Same objection.)

A. We did.

Q. 146. Did you receive a copyright?

(Same objection.)

A. Yes, sir; we did.

Q. 147. From what department at Washington?

(Same objeotion; and, further, because the copyright is the best evidence.)

A. It seems to me it came from the Interior Department—the Patent Office.

Q. 148. Are the papers here presented to you the registration papers issued to you on applying for a copyright for the trade-mark stamped upon your cotton sheetings?

A. They are.

Certified copy of registration of trade-mark of the Janesville Cotton Manufacturing Company are offered in evidence and are marked Defendant's Exhibit No. 2.

(Objected to as incompetent and irrelevant, and because it is not a proper time for the defendant to make his case.)

Q. 149. How long did the Janesville Cotton Manufacturing Company, the old corporation, continue to use the stamp, the letters "L L," on cotton sheetings without any objection from any one, if at all?

(Same objection—incompetent and irrelevant.)

475 A. I should say ten years, certainly.

Q. 150. When and by whom was the first objection ever made to their using those letters "L L" on their cotton sheetings?

(Same objection.)

A. The Lawrence Manufacturing Company.

Q. 151. By whom?

A. By Mr. Rainey.

Q. 152. The counsel here present?

A. Yes, sir.

Q. 153. When was it?

A. In February, 1886, I should say it was; it was in the winter season.

Q. 154. Did you understand that the Janesville Cotton Mills, the new company, was bound by the decree which the Janesville Cotton Manufacturing Company, the old company, had consented to have entered in this case brought by the Lawrence Manufacturing Company?

A. It never was my individual understanding in the case.

Q. 155. Was the Janesville Cotton Mills in any way the successor of the Janesville Cotton Manufacturing Company, except that the Janesville Cotton Manufacturing Company conveyed its property to the Janesville Cotton Mills?

A. I individually understand that they were obliged to pay any obligations that they had signed previous to the transfer of the property.

Q. 156. Beyond what they had agreed to do?

A. No, sir; not beyond what they had agreed to do.

Q. 157. Is it not stated just what of the obligations of the Janesville Cotton Manufacturing Company the Janesville Cotton Mills would assume and pay?

A. Yes, sir.

Q. 158. Why did the Janesville Cotton Manufacturing Company give up business?

(Objected to as incompetent and immaterial.)

A. I think they were forced to.

476 Q. 159. Were they embarrassed?

A. I think they were compelled to by embarrassment.

Q. 160. They were unable to go on with the business?

A. Yes, sir.

Q. 161. And the Janesville Cotton Mills was organized on a different, and it was thought a better, basis to carry on business, was it?

A. Yes, sir.

Q. 162. Now, was the reason that the Janesville Cotton Manufacturing Company consented to have the decree entered against it which was entered that it intended to abandon the manufacture of cotton sheetings, and that it would have no use for any stamp upon cotton sheetings after July 1, 1886?

A. Yes, sir.

Redirect examination:

Q. 163. You have been made to say, on cross-examination, quoting from your affidavit in the old case, "that the complainant has no right to use double L." How do you know that to be a fact?

A. Have I stated any such thing as that?

Q. 164. If you have stated such a fact as that, you didn't intend to state it, did you?

A. If I stated it, I didn't know that I had stated any such thing.

Q. 165. You didn't intend to be so understood?

A. Not at all.

Q. 166. You have been made to state, in your cross-examination,

by quoting from your affidavit in the old case, that the words "Lawrence Mills" and the bull's head are the trade-mark of the complainant; how do you know that to be a fact?

A. In securing our trade-mark we tried to patent something, and it would not do. It was a combination——

Q. 167. You are evading the question. I stated in my previous question that in your cross-examination you were down as saying that it was a fact that the words "Lawrence Mills" and the
477 figure of a bull's head were the complainant's trade-mark; now, my question is, How do you know that to be the trade-mark of the complainant?

A. Well, it must constitute the trade-mark if anything does.

Q. 168. That is only a supposition of yours—that is all?

A. That is all.

Q. 169. You don't state it as a fact, then, that it is its trade-mark?

A. I state it as a supposition.

Q. 170. Now, you will not undertake to say that double L is not its trade-mark, will you?

A. I know they would not give us any patent on the letters——

Q. 171. That is not the question. Do you state as a fact that double L is not a trade-mark of the Lawrence Manufacturing Company?

A. I don't believe it is.

Q. 172. It is only an opinion of yours, then?

A. Yes, sir.

Q. 173. It may be a trade-mark, notwithstanding your opinion?

A. That is my opinion.

(Question repeated.)

A. I don't believe it can be.

Q. 174. That is not my question. You believe it cannot be, but yet it may be, notwithstanding your opinion?

A. I don't believe any such thing. I don't believe it is possible.

Q. 175. Do you know anything about the jobbing trade in brown sheeting goods, except in so far as you come in contact with it in your office?

A. I have never been engaged in jobbing goods.

Q. 176. Do you know anything about the retail trade?

A. General retail trade, you mean?

Q. 177. Yes.

A. Oh, I know something about it; we are selling goods; yes, sir.

Q. 178. Do you know anything about how the retail dealers look upon a trade-mark?

A. I don't know it.

Q. 179. You don't know anything about the consumers of cotton goods either?

A. No, sir.

478 Q. 180. And you have no idea and can form no definite idea as to whether or not either the consumer or retail merchant is likely to be deceived or not by a simulation of a trade-mark?

A. Well, people are liable to be deceived, but I don't see how they could be deceived by anything so entirely dissimilar as those two brands of goods.

Q. 181. That is only an opinion of yours?

A. Yes, sir, but I think it is well founded.

Q. 182. A party may be deceived, notwithstanding that opinion of yours, could he not?

A. It is not probable.

Q. 183. It is possible, though?

A. I don't see it.

Q. 184. How many looms has the new company now on four-yard goods which is branded double L?

A. We may have 660 on double L's to-day, but generally we have them all on double L's.

Q. 185. That has been true ever since the new company went into existence?

A. A large proportion of the time it is; they have been on four-yard goods.

Q. 186. What has been your average monthly output since the first of July on double L sheetings?

A. I can't tell you without referring to the books.

Q. 187. You keep the books?

A. Yes, sir.

Q. 188. Give us an idea.

A. There is a good deal of difference between the months, and I can't tell.

Q. 189. Give us, as near as you can, from the maximum to the minimum, or the average.

A. I should say 500,000 average a month.

Q. 190. Put it in bales, please.

A. There is 1,250 yards to a bale; you can figure it out.

Q. 191. Isn't it true that the new company kept possession of the same office and the same books as the old company?

A. Yes, sir.

479 Q. 192. Isn't it also true that it kept the same list of customers as the old company, practically?

A. Yes, sir; and got as many new ones as it could.

Q. 193. Isn't it also true that you have used since then the old books—the books of the old company?

A. Yes, sir.

Q. 194. Did you open a new set of books for the new company?

A. We didn't open a new set of books; we opened new accounts and used the old books.

(Signature waived.)

GEORGE G. SUTHERLAND, being first duly sworn, testified:

By Mr. RAINEY:

Q. 1. State your name, age, residence, and occupation.

A. George G. Sutherland; age, 35; residence, Janesville, Wisconsin; occupation, attorney-at-law.

Q. 2. What connection have you now with the defendant in this case—the Janesville Cotton Mills?

A. A director and vice-president.

Q. 3. What connection had you with the old company?

A. I was a director.

Q. 4. And a stockholder also, weren't you?

A. Yes, sir.

Q. 5. You represented the old company in the old suit of the Lawrence Manufacturing Company, pending in the United States district court for the western district of Wisconsin?

A. Yes, sir.

Q. 6. And you also represented the company in signing the stipulations and entering the decree in that case, did you not?

A. Yes, sir.

Q. 7. I now hand you the original files in said case and ask you to examine the stipulation attached thereto, together with the
480 decree entered therein, and state if the signatures attached thereto of George G. Sutherland are in your handwriting?

(Papers shown witness.)

A. They are.

COMPLAINANT'S COUNSEL: The original bill in the case pending in the United States district court for the western district of Wisconsin against the Janesville Cotton Mills is now offered in evidence and asked to have identified by the notary by his signature (which is done).

Q. 8. You were present at a meeting of the old company on the 3d day of April, 1886, weren't you?

A. I believe I was; I could not tell the date.

Q. 9. Will you please read a copy now handed you of the proceedings of that meeting, and state what papers are referred to therein.

A. It is the stipulation attached to that bill; I don't know that I have ever seen that other stipulation you spoke about.

Q. 10. Was that not before the directors at that meeting—two papers for their consideration—one the stipulation, which was filed with the original papers in the old case, and another a proposed agreement on behalf of the Janesville Cotton Manufacturing Company to cease using double L on its four-yard sheetings?

A. That I could not state; I could not be positive about it.

Q. 11. There was another paper submitted by you to the directors, was there not?

A. I could not state.

Q. 12. I now hand you three letters, dated Janesville, Wis., April 3, May 6, and May 22, 1886; state by whom they were written?

A. They were written by me.

Q. 13. In the letter of April 3 there is a reference to stipulations, and also to an agreement; are they the same papers referred to by the proceedings before the board of directors on April 3, to which your attention has been called?

A. I presume they are.

481 Q. 14. Won't you state that they are as a fact?

A. Yes, sir.

Q. 15. Now, I hand you a paper which I ask you to read, and state if that is not a copy of the other paper referred to, both in proceedings before the board of directors of the old company and in your letter of April 3d?

A. I presume it is; I looked among my papers last night and could not find anything like that.

Q. 16. How many papers did you receive from the firm of Raymond & Rainey to be executed by you or by the Janesville Cotton Manufacturing Company?

A. Well, I could not be positive that I received any more than the stipulation I signed that is attached to the bill.

Q. 17. Don't you remember to have received another paper, which is referred to both in your letter and in the proceedings before the board, and which you think the copy just handed you is a copy of?

A. No, sir; I don't remember receiving that; I may have received it; I don't remember it.

COMPLAINANT'S COUNSEL: The paper referred to as a copy is here introduced in evidence, subject to further proof, as "Exhibit Janesville Cotton Mills Agreement" (and is so marked).

Q. 18. There was another paper besides the stipulation signed by you sent to you from the firm of Raymond & Rainey, solicitors for the Lawrence Manufacturing Company, was there not?

A. There was a form of decree.

Q. 19. Was there no other paper besides that sent to you?

A. I don't remember of any.

Q. 20. Then what do the words in your letter of April 3d, in which you say that they are further authorized—the president and secretary—to sign the agreement drawn by you on receiving the release mentioned in your letter from the Lawrence Manufacturing Company; what does that refer to?

482 A. I presume that it refers to an agreement similar to that, but I don't think you ever sent that to me, while you may have done so, but I don't think you did.

Q. 21. How could you have written that unless you had the paper before you?

A. You may have sent it to the company; still I don't remember of ever seeing it.

Q. 22. Don't you remember to have seen any other paper besides the stipulation which you signed?

A. No; I don't.

Q. 23. Then how could you have written this letter of yours of April 3d?

A. I say I don't remember now; it may have been there.

Q. 24. You won't swear that you had no such paper in your possession?

A. No, sir; I won't.

Q. 2. What connection have you now with the defendant in this case—the Janesville Cotton Mills?

A. A director and vice-president.

Q. 3. What connection had you with the old company?

A. I was a director.

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A. No; I don't.

Q. 23. Then how could you have written this letter of yours of April 3d?

A. I say I don't remember now; it may have been there.

Q. 24. You won't swear that you had no such paper in your possession?

A. No, sir; I won't.

Q. 25. You won't swear that no such paper was before the board of directors?

A. No, sir; I could not.

Q. 26. Don't you think it is likely that such a paper was before the board of directors and also in your possession at the time you wrote?

A. No, sir; I can't say about that.

Q. 27. You won't say it was not?

A. No, sir.

Q. 28. Did you ever receive from the Lawrence Manufacturing Company, through Raymond & Rainey, its solicitors in this case, the release of the old company from damages mentioned in the proceedings of the board of directors and in your letter of April 3d?

A. Yes, sir.

Q. 29. I now hand you a paper; state whether or not it is a copy of such release.

A. I should think it was.

COMPLAINANT'S COUNSEL: Said paper is now offered in evidence and asked to be marked as "Exhibit Lawrence Manufacturing Company Release" (which is done).

Q. 31. And this is the release referred to in your letter of April 3 and also in the proceeding of the board of directors of the old company of April 3?

A. I think it is.

483 Cross-examination:

Q. 32. Was the Janesville Cotton Mills a distinct and separate corporation from the Janesville Cotton Manufacturing Company?

(Objected to as incompetent, irrelevant, and immaterial and not the proper way to prove it.)

A. Yes, sir.

Q. 33. Did they in any way ever assume the obligations of the Janesville Cotton Manufacturing Company except so far as they are stated to have been assumed in a resolution that has been given in evidence?

(Same objection.)

A. No, sir.

Q. 34. Were the Janesville Cotton Mills in any way bound by the decree against the Janesville Manufacturing Company or bound to observe it?

(Same objection.)

A. No, sir.

Redirect examination:

Q. 35. That is only your opinion that they were not bound to observe it?

A. Of course.

Q. 36. You don't state it as a fact?

A. That is my understanding of it.

Q. 37. Who paid you for your services as a solicitor in the old company?

A. Mr. Eldred, the treasurer.

Q. 38. When were they paid?

A. That I could not state without going to my books.

Q. 39. Did he pay it as treasurer of the old or new company?

A. I believe he paid it as treasurer of the old.

Q. 40. How is that as a fact?

A. My bill was made out to the old company, and he paid it.

484 Q. 41. When? Since the new company went into existence?

A. Yes, sir.

COUNSEL: That is all.

(Signature waived.)

COMPLAINANT'S COUNSEL: I now offer in evidence the affidavits of A. E. Eckstedt, of Red Wing, Minnesota, and Richard Hodd, of Omaha, Nebraska, entered in this case.

By agreement of parties it is stipulated that the same may be read with the same force and effect as though taken upon notice, subject to all objections as to the competency and materiality of the subject-matters in said affidavits contained.

It is stipulated that these depositions, after being transcribed on the type-writer, shall be sent to the solicitors for the complainant, to be by them retained in their possession for the purpose of having them printed, and the same then, with exhibits, to be forwarded to the clerk of court for filing.

Adjourned, by agreement, to the office of Raymond & Rainey, 44 Honore block, Chicago, at nine o'clock Saturday morning, January 15, 1887.

I, the undersigned, hereby certify that the foregoing depositions of A. J. Ray and George G. Sutherland were taken before me in the case at the time and place and under the conditions mentioned on the first page of the same and in the stipulations on subsequent pages thereof; that the foregoing type-written pages contain all the evidence given by both said deponents, the portion of their evidence taken in short-hand being therein fully and correctly transcribed.

Dated Janesville, Wis., January 6, 1887.

[SEAL.]

F. C. GRANT,
Notary Public for Wisconsin.

485 EXHIBIT A.

It is stipulated that, to save the necessity of taking full extracts from the minutes of the Janesville Cotton Manufacturing Company, that abstracts of the same may be selected by the counsel for complainant, and that the same may be used in lieu of the original or certified copies, subject to all objections as to their competency and

relevancy, and that the counsel for the defendant may give in evidence such additional abstracts as he may deem necessary or proper, subject to the same objections.

Counsel for the complainant reads from the records:

MARCH 10, 1886.

Special meeting of the board of directors held on that day.

Certain resolutions were offered and passed, to be submitted to a stockholders' meeting to be held on the 11th day of March, 1886, and, among other things, as follows:

"Resolved by the stockholders of the Janesville Cotton Manufacturing Company, That said company be dissolved as a corporation, all of its property sold, and its affairs wound up.

"And whereas it is contemplated by the stockholders of said company that some of them shall immediately proceed to organize another corporation for the same purposes of manufacturing and selling cotton cloths, with the view and understanding that the amount of capital stock of such new corporation shall be fixed at $150,000, to be paid in cash or indebtedness of the company by the subscribers therefor, as such payment shall be called for by its board of directors, and that each of the present stockholders of the present Janesville Cotton Manufacturing Company shall have the privilege for ten days of subscribing for the capital stock of such new company *pro rata*, share and share alike, in proportion to the amount of the stock of said Janesville Cotton Manufacturing Company owned by them, respectively."

486 From page 416: "Special meeting of the stockholders, held on March 11, 1886."

On page 417 the names of the stockholders present are given, and, upon motion of Mr. Pease, a resolution was adopted, in substance the same as passed at a directors' meeting on March 10, from which quotations have been made.

From page 421 the following is quoted:

"Now, therefore, it is mutually agreed by and between the subscribers hereto that each of them will subscribe for the number of shares of the capital stock of such new corporation set opposite our respective names hereto subscribed: Provided, That the aforesaid conremplation shall be carried out by the sale of the property of the said Janesville Cotton Manufacturing Company, and conveyance of the same to such new corporation to be organized with the amount of capital stock and to be subscribed and paid for as hereinbefore stated."

The foregoing preamble and agreement was adopted by an aye and nay vote, representing 2,006 shares in person and 589 by proxy, voting in favor and no votes against.

It is agreed between the respective parties that the capital stock of the Janesville Cotton Manufacturing Company was a few shares less than 3,000, each share of the par value of $100.

From page 423: At a special meeting of the board of directors, held April 19, 1886, under a resolution, a deed was presented, purporting to be made on the 21st of April, 1886, between the Janes-

ville Cotton Manufacturing Company and the Janesville Cotton Mills, a corporation organized under the laws of the State of Wisconsin, which recites that—

"The party of the first part, for and in consideration of the sum of $1, to it paid by said party of the second part,"—that is,
487 the Janesville Cotton Mills—"the receipt whereof is hereby acknowledged, and for the further consideration that the said party of the second part assumes and agrees to pay all the indebtedness of said party of the first part due or to become due upon its promissory notes or other written contracts, which are not secured by a lien upon its property, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, etc., * * * "all and singular the real estate, water power, cotton mills, offices, storehouses and other buildings, fixtures, machinery, tools, and appurtenances thereunto belonging or appertaining of the said party of the first part, situate and being in the city of Janesville, county of Rock and State of Wisconsin."

488 United States Circuit Court, Western District of Wisconsin.
In Equity.

LAWRENCE MANUFACTURING COMPANY
vs.
JANESVILLE COTTON MILLS.

Depositions taken on this seventeenth day of January, 1887, at Chicago, Illinois, before me, William W. Elliott, a notary public in and for the State of Illinois, residing in Cook county, in said State, at the office of Raymond & Rainey, city of Chicago, on behalf of the complainant, in the presence of W. G. Rainey, representing complainant, and I. C. Sloan, representing defendant, all formalities as to caption and certificate being waived.

P. H. T. MASON, being first duly sworn, testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. P. H. T. Mason; age, 30; residence, Chicago, Illinois; occupation, clerk for Messrs. Raymond & Rainey.

Q. 2. State what are your special duties as such clerk.

A. Among others, my duties are to attend to the correspondence, the receiving and opening of the mail.

Q. 3. Do you know Mr. George G. Sutherland, the solicitor of record representing the Janesville Cotton Manufacturing Company
489 in a recent suit in equity pending in the U. S. circuit court, western district of Wisconsin, wherein the Lawrence Manufacturing Company was a complainant; and, if so, when and where did you make his acquaintance?

A. I have seen Mr. Sutherland once or twice in our office at Chicago, his business being in our office with reference to said suit.

Q. 4. State what, if any, papers were passed between Mr. Sutherland and the firm of Raymond & Rainey at such visit having reference to said suit.

A. Yes; I know of some papers that were handed to Mr. Sutherland at the time of his visit to our office. Mr. Sutherland brought into our office a stipulation, written by himself, for the dismissal of that suit. This stipulation was not exactly satisfactory to Mr. Raymond, and it was given to me to rewrite, with some alterations. At the same time Mr. Raymond dictated to me an agreement to be handed to Mr. Sutherland, which he wished Mr. Sutherland's company—the Janesville Cotton Manufacturing Company—to execute and return to him. At the same time Mr. Raymond also dictated a letter to Mr. Sutherland. Mr. Sutherland then went out of the office, and promised to return, I think, in an hour or two for the papers. Mr. Sutherland did come back to our office some time in the afternoon, and the letter and three copies of the stipulation and three copies of the agreement were handed to him.

Q. 5. In your last answer you refer to a stipulation and an agreement. Please explain the difference between the two, if any.

(Defendant objects to that testimony as calling for oral testimony of the contents of written papers.)

A. By the stipulation I mean the paper which was to be filed in the court and signed by the attorneys dismissing the suit, and by the agreement I mean a paper which was to be executed by
490 the Janesville Cotton Manufacturing Company agreeing to discontinue the use of the trade-mark in dispute.

Q. 6. Can you state the date of the stipulation referred to?

A. Yes; it was dated March 30, 1886.

Q. 7. What was the date of the agreement you have referred to?

A. It was also dated March 30, 1886.

Q. 8. On what date did you deliver the three copies of this stipulation and agreement to Mr. Sutherland?

A. That was also on March 30, 1886.

Q. 9. Can you refer to the letter book of the firm of Raymond & Rainey for the copy of the letter you have stated in answer to question 4, the original of which you stated was handed to Mr. Sutherland?

A. By referring to the letter book of Raymond & Rainey for 1886, Letter Book B, on page 963, I find the copy of the letter referred to by me, the original of which I handed to Mr. Sutherland, together with the three copies of the stipulation and agreement.

A copy of the letter referred to in the words and figures following, to wit:

"MARCH 30, 1886.

"Mr. George G. Sutherland, att'y for the Janesville Cotton M'f'g Co., present.

"MY DEAR SIR: I hand you herewith three copies of the stipulation signed by us for the discontinuance of the suit of the Lawrence Manufacturing Company *vs.* The Janesville Cotton Manufacturing Company, together with three copies of an agreement to be executed under the authority of the board of directors by the president and secretary, and under the seal of the latter company. I have no

doubt that the Lawrence Company will authorize this settlement of the matter. Of this, however, we will inform you later, and
491 if so authorized we would be glad if you would have the agreement herewith duly executed and return to us the original and one of the copies. Please also return to us the original copy of the stipulation, with one copy thereof for our own use.

"If your company desires it we will obtain from Boston and send to you a formal release by the Lawrence Company, duly executed, of all claims for damages, etc., but the agreement of the Janesville Company, made in consideration of that release, and the whole matter being matter of record in court, would not necessitate such a formal release from the Lawrence Company. It will, however, be furnished if desired.

"Yours truly,

J. H. RAYMOND,
"*For Raymond & Rainey.*

"Dictated letter."

Is now offered in evidence and asked to be marked "Complainant's Exhibit Sutherland Letter No. 5."

Counsel for complainant here notifies counsel for defendant to produce the original of said letter for use at the hearing of this cause, in the absence of which the above copy will be used.

Q. 10. Please state whether the firm of Raymond & Rainey ever received any answer to this letter above copied.

A. They did. A letter written by Mr. Sutherland, which is now before me, dated Janesville, Wis., April 3, 1886, addressed to Messrs. Raymond & Rainey, written on the letter-head of the Janesville Cotton Manufacturing Company.

(Said letter is offered in evidence by complainant as "Exhibit Sutherland Letter No. 6," being the same letter referred to in answer to question 124 in the deposition of A. J. Ray, and also in the answer to question 12 in the deposition of George G. Sutherland, identified by signature of F. C. Grant, notary.)

492 Q. 11. State whether Mr. Sutherland ever returned the stipulation and agreement which you have stated that you handed him to be executed by the Janesville Cotton Manufacturing Company or by himself as its solicitor.

A. Mr. Sutherland did return one of the copies of the stipulation signed by himself as attorney for the Janesville Company, but did not return any of the copies of the agreement.

Q. 12. What became of the original stipulation that was executed by Mr. Sutherland in said case?

A. It was filed, I suppose, in court in the case against the Janesville Cotton Manufacturing Company.

Q. 13. You are a stenographer, are you not?

A. I am.

Q. 13½. In your answer to question 4 you have stated that Mr. Raymond dictated to you the letter and stipulation which afterward

you stated were dated March 30. Please state how you took the same from Mr. Raymond's dictation.

A. I took it in short-hand, and afterward wrote the letter and papers out on the type-writer.

Q. 14. How about the agreement referred to?

A. I took that in short-hand also, and made three copies of it on the type-writer at the same time.

Q. 15. State whether you preserved a copy of said agreement.

A. We did—I did. The three copies which were written on the type-writer—that is, both the stipulation and the agreement—were given to Mr. Sutherland, but before doing so a letter-press copy of the letter was taken in our letter book, and letter-press copies of the stipulation and the agreement were taken on loose sheets.

Q. 16. I now hand you a paper. Please state what it is.

A. This is the letter-press copy of the agreement which was handed to Mr. Sutherland.

The same is offered in evidence and asked to be marked
493 "Exhibit Janesville Cotton Manufacturing Company Agreement."

(Objected to as incompetent and immaterial.)

It is stipulated that a type-writer copy of said letter-press copy shall be used in lieu of the said letter-press copy and with the same force and effect, said type-writer copy being the paper heretofore offered in evidence in this case, and marked "Janesville Cotton Mills Agreement, F. C. Grant, notary."

Q. 17. Please state whether there was any other stipulation or agreement sent from the firm of Raymond & Rainey, either by letter or handed to Mr. Sutherland, than those you have referred to heretofore.

A. No; not that I know of.

Q. 18. All such papers prepared and sent from the office of Raymond & Rainey are prepared and sent through you, are they or not?

(Objected to.)

A. Yes; as a rule, when I am in the office, I take all of the dictation and attend to the writing out of letters and papers.

Q. 19. State whether you ever handed Mr. Sutherland an agreement other than the agreement you handed him on March 30, a copy of which has been identified heretofore as "Exhibit Janesville Cotton Manufacturing Company Agreement," or ever sent Mr. Sutherland such a paper by mail other than the one referred to.

A. No; the stipulation and agreement to which I referred as having been handed to Mr. Sutherland are the only papers that were handed or sent to him involving an agreement by the Janesville Manufacturing Company.

Cross-examination waived.

P. H. T. MASON.

494 JAMES H. RAYMOND, being duly sworn, deposes and says as follows:

Q. 1. State your name, age, residence, and occupation.

A. James H. Raymond; of lawful age; member of the firm of Raymond & Rainey, solicitors and of counsel for the complainant; residence, Cook county, Illinois.

Q. 2. State what connection, if any, you had with the suit of the present complainant against the Janesville Cotton Manufacturing Company in the United States circuit court, western district of Wisconsin, and state generally what you did in said case representing the complainant.

A. I was in said suit both the attorney-at-law and the attorney-in-fact of the complainant. I commenced the same under its instructions and had full power to act for the complainant in its prosecution and in the settlement of its subject-matter. The negotiations for its settlement from first to last were conducted by me, with the advice and assistance of my partner, Mr. Rainey. After correspondence and consultation, in which it was frequently represented—

(The defendant objects to testimony of representation made by any person as incompetent and immaterial.)

on the part of the complainant that the purpose of the litigation was to protect its trade-mark property—

(It is especially objected that testimony as — representations on the part of the complainant is immaterial and incompetent.)

rather than to recover damages, and on the part of the defendant that it was willing in good faith to discontinue the use of complainant's trade-mark, an agreement was made and entered into by Mr. George G. Sutherland, representing the defendant, and myself, as representing the complainant, under which the suit was to be dismissed—

(Testimony of agreement is objected to as incompetent
495 and immaterial, and also that if any such agreement was made it was in writing.)

or discontinued without costs (none had accrued, except such as had been incurred and paid at the filing of the bill), and all damages accrued prior thereto were to be released. This agreement was effected verbally, in my office, and subject only to two matters: First, the ratification of the board of directors of the defendant company, and, second, whether the complainant should furnish a formal release of the damages, independent of the papers to be filed in court. It was my voluntary offer and suggestion that the defendant should have a reasonable time in which to get rid of the stock on hand bearing infringing marks. The form which this agreement should take was fully discussed and agreed upon by Mr. Sutherland and myself at that time, and papers were dictated, I think, in his presence, embodying the same, which papers were taken by him

from my office the same day, they having been written out and handed to him by our chief clerk, Mr. P. H. T. Mason, with a letter stating that the formal and separate release—

(Objected to the witness stating the contents of that letter on the ground that it is incompetent and immaterial, and also that the letter is the best evidence.)

to the defendant would be furnished if desired. Subsequently I was informed by Mr. Sutherland that the settlement so agreed upon between us had been ratified and adopted by the board of directors of the defendant company, and that the formal release referred to was desired. I refer here especially to Mr. Sutherland's letter, dated April 3, 1886, to us, heretofore introduced in evidence; that letter was received and answered by me April 5, 1886. The action of the said board of directors was accepted, the formal release was promised, and all of the papers, including the stipulation, the decree, and the formal release referred to, were in due course and promptly executed, delivered, and filed pursuant to the agreement, partially verbal and partially in writing, thus arrived at between the
496 defendant company and me. The last thing to evidence this agreement in all its details should have been the forwarding to me of the agreement of the defendant company to desist from the further use of complainant's trade-mark, which, from the time of the conditional agreement made between Mr. Sutherland and me to the time of the ratification and practical consummation of the agreement between the directors and myself, formed a necessary and the principal part thereof. I refer to the draft of an agreement so agreed to and handed to Mr. Sutherland and so accepted by the board of directors of the defendant, a type-written copy of which has been introduced in evidence, dated March 30, 1886.

Q. 3. Please state whether there was dictated to Mr. Mason by you, or sent by you to Mr. Sutherland, any other agreement than the one you have just referred to, which the Janesville Cotton Manufacturing Company was to execute.

A. The first agreement that the suit was to be dismissed without costs and without back damages was in the rough, and substantially arrived at by correspondence prior to the date of my interview with Mr. Sutherland, March 30, 1886, and he then brought to me a draft of a stipulation which I had submitted by mail, and to which he objected. Between the commencement of the correspondence and this date I had learned—

(Defendant objects to witness testifying to what he had learned from any source, as the agreement, if any, is in writing, and such testimony is incompetent and immaterial.)

that the defendant company was not paying its debts nor living up to its contracts and that its long existence was at least questionable. At the interview with Mr. Sutherland, to which I have referred—

(All conversation between the witness and Mr. Sutherland is ob-

jected to on the ground that if any agreement was made
497 between the parties to that case it was reduced to writing, and parole testimony is incompetent and immaterial.)

I so stated to him and stated to him that it was a necessary part of the agreement, so far as the complainant was concerned, that the agreement should be binding not only upon the successors in the corporation of the then stockholders and officers, but also upon the successors of said corporation in business, and in an explicit conversation with him at that time explained to him why I insisted upon the words "successors in business" in said agreement. It was distinctly understood between Mr. Sutherland and myself at that time, and subject only to the two conditions which I have named, that this agreement should be made and should be binding upon whoever might succeed the Janesville Cotton Manufacturing Company in the manufacture and sale of brown cottons. With this explanation, my answer to the question is that the agreement dated March 30, 1886, binding the said company and its successors in business was, barring formal stipulations, the only agreement ever fully made between the parties to that suit. It was consummated, subject, and subject only, to the conditions I have named, on March 30, 1886, and the conditions were arranged and the contract fully completed on April 3, 1886.

(The defendant moves to strike out all the answer of the witness to the last question, except that part in which he states that the agreement referred to is the only agreement furnished to Mr. Sutherland or the defendant, on the ground that it is not responsive to the question, that it is incompetent, immaterial, and that it would be improper testimony given by any witness, and that it is especially improper as given by a solicitor and counsel in the case.)

Q. 4. Please state the circumstances under which the agreement of March 30, referred to by you, were arrived at between you and Mr. Sutherland.

(Defendant objects on the ground that it is incompetent and immaterial, calling for improper and secondary evidence.)

498 A. Let it be understood that my last answer is here repeated to this question, with this further statement, that the meeting was had by appointment arrived at by correspondence.

The WITNESS: I think it due to myself, in explanation of my giving testimony, being of counsel in the case, to add that the agreement forming a part of the cause of action in this case was made by me partially with the attorney of the Janesville Cotton Manufacturing Company and partially with its directors; that in part it was in writing and in part verbal; that it is evidenced one part by one paper and another by another, and I have reluctantly concluded that it was necessary in order that the court might properly locate the bad faith here alleged that I should give all the facts connected with the matter.

Cross-examination by Mr. SLOAN:

X Q. 5. Have the firm of Raymond & Rainey or either member thereof any pecuniary interest in the result of this case?

A. The firm of Raymond & Rainey and each of the members thereof and every one in our employ have no direct or indirect pecuniary interest in any matter whatever in our charge except for the payment of our regular *per diem* according to the time, in our judgment, necessary to devote to such a matter and actually so devoted, which *per diem* is perfectly well understood by every client for whom we do business. I have, of course, not referred to the annual and specific retainers which we receive.

X Q. 6. Have the firm of Raymond & Rainey or either member thereof any agreement or understanding with the Lawrence Manufacturing Company by which the amount of their compensation is in any way to depend upon the result of this case?

A. Most emphatically, no, sir; nor have we any such agreement with anybody on earth with reference to any case.

499 X Q. 7. How many cases have you brought and are now pending for the Lawrence Manufacturing Company to restrain the defendants from using the letters "L L" used on cotton sheetings manufactured by them, respectively?

(Objected to as incompetent and immaterial and not proper cross-examination.)

A. Between five and ten cases; some have been dismissed. In them and in others which are still pending upon stipulations with reputable attorneys, upon which we feel safe in relying, the defendants have acknowledged the complainant's right to the exclusive use of double L on brown cottons weighing four yards to the pound or thereabout, and, therefore, while some of these suits are still pending, they are not being actively prosecuted. The suits being actively prosecuted are against the Beaver Dam, the Janesville, the Aurora, the Evansville, and the Tennessee Mills, stipulations having been made that the testimony taken, so far as applicable, may be used in all of these cases.

Mr. SLOAN: That answer is objected to, except that part which states the number of cases pending, as not being responsive to the question, and as incompetent, immaterial, and improper.

X Q. 8. Do you feel any interest in these cases brought to restrain the use of "L L" on cotton sheetings?

(Same objection.)

A. The only interest which I feel in any of these cases which is not felt by every conscientious lawyer in every case is felt in the case in which I am testifying, in which I feel that a fraud has been perpetrated upon my client, in which I partially share, but for which I am in no way responsible, and, so far as I am unable to prevent it, that feeling may be such an interest as I understand you to refer to.

Mr. SLOAN: That answer is objected to, except that part re-
500 lating to the witness' interest in the cases referred to, as not being responsive to the question, as being incompetent, immaterial, improper, and unprofessional.

The WITNESS: I desire to add that I do not now intend, nor do I hereafter propose, to personally locate the gross fraud to which I have referred.

X Q. 9. Did you ever have an interview with the directors of the Janesville Cotton Manufacturing Company or any or either of them?

A. The only personal interviews I ever had relating to this agreement with any one representing that company have been with Mr. Sutherland in my office March 30, 1886, and with Mr. Sloan, the interrogating counsel, in Madison, Wisconsin, after the present suit was commenced.

X Q. 10. Why do you mention my name in an answer to that question?

A. Because the matters to which I have testified were talked over between us in Madison at the argument of the motion for a preliminary injunction in this case. I have been informed that Mr. Sutherland is a director in the company, and I think he has so represented himself to me; in fact, I am sure he has; but I could not name, I think, any other director in the company.

X Q. 11. Do you understand that I am or ever have been a director in either of the Janesville companies?

A. I do not know anything about it. In the absence of knowledge I have not got I should say you were not. I answered as I did simply for the purpose of making my answer as broad as I understood the purpose of the question to be.

X Q. 12. Did you ever have any correspondence with the officers or directors of the Janesville Cotton Manufacturing Company?

A. I think I have, both directly and indirectly. The indirect correspondence was through the principal owner in one of the
501 largest jobbing houses of Chicago, who advised the Janesville Cotton Manufacturing Company that the complainant's rights to the trade-mark were complete, in his opinion. The correspondence to which I referred in my direct examination was had directly with Mr. Sutherland, as indicated.

(Mr. SLOAN: That part of the last answer which relates to what an owner in the jobbing house in Chicago wrote to the Janesville Cotton Manufacturing Company is objected to as not being responsive to the question, and as being incompetent, immaterial, and improper.)

Witness continues: After the indirect correspondence above referred to had been practically completed, and the Janesville Cotton Manufacturing Company had thus announced its purpose to desist from further infringement, and had corresponded with the gentleman referred to as to what its new stamp should be, we had some correspondence directly with the company and with Mr. William

A. Lawrence, president, whom I supposed was also a director. We have a letter from Mr. Lawrence, signed as president, and dated February 9, 1886, in which he says: "Telegram from Mr. Raymond is received. I do not expect to see him in Chicago this week. Mr. Rainey's request has been referred by our directors to George G. Sutherland, Esq., our attorney. You will probably hear from him soon." Signed "Very respectfully, yours, William A. Lawrence, pres't." I have quoted the whole of said letter except the caption. On March 27, 1886, we received a telegram reading as follows: "Our Mr. Sutherland will call on you Tuesday, 30th inst., in regard to the matter of Lawrence M'f'g Co. If time inconvenient, answer." Signed "Janesville Cotton M'f'g Co." The correspondence, however, to which I specially refer, I think, has all been already offered in evidence, except immaterial parts thereof.

(Mr. SLOAN: The answer of the witness following the last objection is objected to as not being responsive, and as incompetent, immaterial, and improper.)

502 X Q. 13. Was the letter from Mr. Lawrence and the telegram referred to by you received after your Mr. Rainey had been to Janesville and had an interview with the Janesville Cotton Manufacturing Company?

A. It was. I find that Mr. Rainey was in Janesville February 5, 1886, and had an interview with the directors of the company and its officers and made a proposition for a settlement (substantially as subsequently consummated), on which date, February 5, 1886, they promised to have a directors' meeting for the purpose of considering that proposition on the Monday following.

(Mr. SLOAN: All of that answer, except that part which states the letter of Lawrence and telegram were written after an interview with Mr. Rainey, is objected to as not responsive, incompetent, immaterial, and improper.)

WITNESS (continuing): In that interview Mr. Rainey was promised that the president would call upon me the following week—following February 5, 1886—which is the explanation of the letter quoted.

(Mr. SLOAN: Same objection to the continuation of witness' answer as last above.)

X Q. 14. Did the owner in the Chicago jobbing house write to the Janesville Cotton Manufacturing Company at your instigation?

A. It came about pursuant to a friendly conversation between us, but that he should correspond with them preliminary to a settlement, I think, was a suggestion original with him.

X Q. 15. Why do you call that an indirect correspondence on your part?

A. For the reason that I was cognizant of the correspondence as it progressed and inspired a considerable part of it, although there were some parts of it which he did not disclose to me. That
503 part of it which stated the position and purposes of the complainant and what kind of a settlement could be made was inspired by me.

X Q. 16. Name that owner in the jobbing house.

A. I should decline to do so, except that during said correspondence and the conversations incident thereto his statements with reference to the rights of the complainant and the position of the defendant fully warrant me in doing so. It was Mr. Robert Hill, the principal owner of the large dry-goods jobbing house of Storm & Hill.

X Q. 17. Has he been a witness in these cotton cases?

A. He has, on the part of the complainant.

X Q. 18. Was that the same Hill who made an affidavit which you used on a motion for a preliminary injunction in the Aurora case?

A. It is.

JAMES H. RAYMOND.

The complainant closes his *prima facie* proof.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, W. W. Elliott, a notary public in and for the said county and State, do certify that the witnesses P. H. T. Mason and J. H. Raymond were duly sworn by me before they were examined, and, by consent of the parties, said deposition was taken on the type-writer by another party.

[SEAL.] WILLIAM W. ELLIOTT,
Notary Public.

504 MASON EXHIBIT A.

"JANESVILLE COTTON MANUFACTURING COMPANY,
"JANESVILLE, WIS., *April 3rd,* 1886.

"Mess. Raymond & Rainey, Chicago.

"DEAR SIRS: I was unable to get a meeting of the directors of the Janesville Cotton M'f'g Co. until this afternoon.

"They have just authorized me to sign the stipulations as drawn, and they further authorized the president and secretary to sign the agreement drawn by you on receiving the release mentioned in your letter from the Lawrence M'f'g Co.

"I have sent the original stipulation to the clerk of the court at Madison, and enclose you a duplicate.

"Yours, &c., GEO. G. SUTHERLAND.

"W. W. ELLIOTT,
"*Notary Public.*"

MASON EXHIBIT B.

"For and in consideration of the discontinuance by the Lawrence Manufacturing Company, of Lowell, Massachusetts, of a suit now pending in the United States circuit court for the western district of Wisconsin against the Janesville Cotton Manufacturing Company, and in consideration of a release of all claims for damages for the

infringement of the trade-mark of said Lawrence Manufacturing Company for brown sheetings by the use of the letters 'L L,' all in accordance with the stipulation in the case now made and executed,

505–879 the said Janesville Cotton Manufacturing Company does hereby, for itself, its successors, both in said corporation and in said business, and for its assigns, covenant and agree to and with the said Lawrence Manufacturing Company, its successors and assigns as aforesaid, not to use the label or trade-mark 'L L' on any goods of its manufacture after the first day of July, A. D. 1886.

"In witness whereof the said Janesville Cotton Manufacturing Company has caused these presents to be signed by its president and its corporate seal to be hereto affixed, duly attested by its secretary, this 30th day of March, A. D. 1886.

"JANESVILLE COTTON MANUFACTURING CO.,

"By —— ——, *President.*

"—— ——, *Secretary.*"

* * * * * * *

880 Circuit Court of the United States for the Western District of Wisconsin.

LAWRENCE MANUFACTURING COMPANY, Complainant,

vs.

JANESVILLE COTTON MILLS, Defendant.

Circuit Court of the United States for the Eastern District of Wisconsin.

LAWRENCE MANUFACTURING COMPANY, Complainant,

vs.

BEAVER DAM COTTON MILLS, Defendant.

Depositions taken on behalf of the defendants in the above-entitled actions this ninth day of November, 1886, at two o'clock p. m., at the office of Pease & Ruger, in the city of Janesville, county of Rock and State of Wisconsin, before me, F. C. Grant, a notary public in and for said State, residing in the city of Janesville aforesaid, pursuant to the notice hereto annexed.

881 W. G. Rainey, Esq., appearing as solicitor for the complainants, and I. C. Sloan, Esq., appearing as solicitor for the respective defendants.

It is stipulated by the solicitors for the respective parties that the depositions taken in the above-entitled causes, signed by the witnesses, respectively, may be filed in each of said causes with the same force and effect as though taken in each cause alone.

CHESTER BAILEY, sworn, testified:

Q. What is your name?

A. Chester Bailey.

Q. What is your age?
A. 65.
Q. Residence?
A. Janesville.
Q. Occupation?
A. Superintendent of Cotton Mills.
5 Q. How long have you resided in Janesville?
A. A little over eleven years.
6 Q. What has been your business during that time?
A. Nine years I have been superintendent of the Janesville Cotton Mills; for two years I have been in business for myself.
7 Q. What nine years have you been superintendent?
A. I commenced in 1875; nine years from '75 would be 1884.
8 Q. What business have you been engaged in during the last two years?
A. I have been engaged in the manufacture of twine, carpet warp, and bats, and for about the last six months I have been superintendent of the Cotton Mills again.
9 Q. The Janesville Cotton Mills?
A. The Janesville Cotton Mills.
882 10 Q. Are you a member of the defendant corporation, the Janesville Cotton Mills?
A. No.
11 Q. You are not a stockholder?
A. No, sir.
12 Q. Were you a member of a former corporation known as the Janesville Cotton Manufacturing Company?
A. I was a stockholder at one time.
13 Q. During what time?
A. I was a stockholder from 1875 to 1880.
14 Q. Where did you reside before coming to Janesville?
A. Town of North Adams, Massachusetts.
15 Q. For how long?
A. I was born and raised up there.
16 Q. What was your occupation there?
A. Cotton manufacturing business.
17 Q. In what capacity?
A. I was superintendent of the O. Arnold & Company's Cotton Mills, at North Adams, Massachusetts, fifteen years before coming West; previous to that I was with other companies in that vicinity; I have followed the business all my life.
18 Q. When did the Janesville Cotton Manufacturing Company commence manufacturing cotton sheetings?

Objected to as incompetent, irrelevant, and immaterial.

A. In 1875, about; we commenced spinning the first of April, got to weaving about the first of June, according to my recollection.
19 Q. How many grades of cotton sheetings did they manufacture, and what were they?

883 Same objection.

A. We commenced making two grades—64 square, heft 3.45; the other grade 56 square, weight four yards to the pound.

20 Q. If those grades were stamped or branded, state what brand or stamp they bore, respectively.

Same objection.

A. The 64 square was branded "Badger State R," the 56 square was branded "Badger State L L," a portion of them; at that time we made, put on different brands sometimes, different letters; we sometimes branded them double X to suit customers; some particular customers would want a bale of goods branded double X.

21 Q. Was there anything else stamped or branded on these two grades of cotton?

Same objection.

A. We made, occasionally, a few bales of sheetings branded centen-ial X X.

22 Q. In addition to the words and letters which were branded upon the cotton sheeting, were there any figures or designs; if so, what were they?

Same objection.

A. Our first brand, there was a badger in a circle of the Badger State; that brand we changed, took out the badger and put in a monogram, Janesville Cotton Manufacturing Company, stamped upon it.

23 Q. How was that monogram formed?

884 A. There was an M. A. J. Co., I believe; it is a pretty hard thing to describe.

24 Q. Explain what you mean by 64 squares and by 56 squares.

Same objection.

A. 64 square is 64 threads to the inch of the cloth each way; 56 square is 56 threads to the square inch each way.

25 Q. How long did the Janesville Cotton Manufacturing Company continue to stamp cotton sheeting in the manner you have described?

Same objection.

A. From the time that we commenced to manufacture until this spring, I think.

26 Q. How long is that?

Same objection.

A. Eleven years, from 1875 to 1886.

27 Q. Was the badger and the monogram stamped upon both grades of sheeting which you have referred to?

Same objection.

A. It has been so long since we used that badger stamp, I have forgotten whether that was in the circle; it is so long ago. I stated

it was in the circle, but I don't know but it was below the band; Mr. Eldred can tell you.

(Question repeated.)

Same objection.

A. I can't recollect positively; it is so long ago.

28 Q. How long since the badger was used?

Same objection.

A. I think we only used it part of the first year.

29 Q. Have you since used the monogram?

Same objection.

885 A. I think the monogram has been used since, up to now.

30 Q. What did the letters "L L" stamped upon the sheeting manufactured by the Janesville Cotton Mill Company indicate or mean?

Same objection.

A. The weight and the count of the goods, 56-square, four-yard goods.

31 Q. What did the "R" stamped upon the other grade indicate or mean?

Same objections.

A. That meant the weight, 3.45, 64 square.

32 Q. What did the words Badger State and the monogram stamped upon the goods indicate and mean?

Same objection.

A. That would indicate the manufacturers of the goods, the Janesville Cotton Manufacturing Company, and the Badger State sheeting.

33 Q. Was any part of the stamp impressed upon the goods manufactured by the Janesville Cotton Manufacturing Company entered at Washington as a trade-mark; if so, what part?

Same objection.

A. Not any, to my knowledge.

34 Q. Is the piece of sheeting now presented to you stamped with the same stamp which the Janesville Cotton Manufacturing Company used for ten years or more?

Same objection, and because leading.

A. I should say it was.

886 Piece of sheeting shown witness, marked Exhibit A, and offered in evidence.

Objected to as incompetent and immaterial.

35 Q. And to what extent and in what territory were cotton sheet-

ings stamped as Exhibit A is stamped put upon the market and sold, and during what period of time?

Same objection.

A. We commenced putting them upon the market in 1875, and they were sold until 1885, and since till now; no, I am wrong there about their being sold now; we haven't branded that brand for the last few months. They were sold over pretty much all the Northwest Territory, all the mills would produce; I don't know how many yards; I could not say.

36 Q. About how many yards?

Same objection.

A. Between four and five million yards a year, I should think.

37 Q. Did anybody at any time object to the use of the letters "L L" upon the sheetings manufactured by the Janesville Cotton Manufacturing Company; if so, when and by whom was such objection made?

Same objection, and because leading.

A. I have no knowledge of any objection being made during my first nine years with the company. While I was away from the company I know but little about their business.

887 38 Q. Was any objection to their use ever made to your knowledge; if so, when and by whom?

Same objection.

A. That is a question I don't know how to answer, not being connected with the business for the last two years until last May, when I went in again. What took place while I was away from the mill I know but little about.

39 Q. Do you know a sheeting manufactured by the Lawrence Manufacturing Company stamped "L L?"

A. I have seen them in market.

40 Q. What brand did they bear besides L L?

A. I think it is "Lawrence Mills sheeting;" I am not positive.

41 Q. Was there any design or figure in addition to Lawrence Mills sheeting?

A. I think there was a bull's head on the top of the piece, above the branding.

44 Q. What did the letters "L L" on those sheetings indicate and mean?

A. I always supposed it indicated four-yards goods, four yards to the pound—56 square.

45 Q. What indicated in that brand by whom they were made?

A. Well, the brand above the double L—"L L."

46 Q. What was that?

A. The name of the firm, and in our case the name of the State—Badger State.

888 COMPLAINANT'S COUNSEL: The latter part of the answer objected to as being volunteered by the witness, not responsive to the question, and as being incompetent and immaterial.

Cross-examination:

47 Q. Do you know any firm of the name of Lawrence Mills?

A. I do.

48 Q. Where does such firm do business?

A. I don't know where they do business. Oh, the location; I didn't understand the question exactly; Lowell.

49 Q. Have you ever been to the place of business of such firm?

A. I have been to their mills.

50 Q. Are you mistaken when you say you know a firm known by the name of Lawrence Mills, and that you have been to their mill?

A. I say I have been in their mill, that I supposed was the Lawrence Manufacturing Company's mill, at Lowell.

51 Q. Then, if I understand you, you are mistaken in saying you know a firm by the name of Lawrence Mills?

A. I don't say I am mistaken. I say I have been in the Lawrence Mills, what I was told was the Lawrence Mills; I am not personally acquainted with the company.

889 52 Q. In your direct examination you stated in substance that the words Lawrence Mills was the name of the firm; now, are you not mistaken in this?

A. I thought it was the name of the firm is what I said.

53 Q. Do you now think it the name of the firm, or is not the concern you refer to the Lawrence Manufacturing Company?

A. The answer I made to that question was, the banding on the goods I thought was Lawrence Mills sheeting.

Question repeated.

A. Why, it may be a different name.

54 Q. How far is North Adams, Massachusetts, from Lowell?

A. I think it is about 140 miles; I am not positive.

55 Q. While you were there, for fifteen years previous to 1875, were you not familiar with double L sheetings made by the Lawrence Manufacturing Company?

A. I never knew much about the double L sheetings; my business was making print goods; therefore I was not much interested in sheetings.

56 Q. But you did know of these double L sheetings while you were at North Adams, did you not; have you not seen them?

A. I have seen sheetings, light goods, with double L on them.

57 Q. While you were at North Adams?

A. Yes.

890 58 Q. Did you come to Janesville before the Janesville Cotton Manufacturing Company commenced to manufacture four-yard sheetings?

A. I did.

59 Q. Is it not true that you assisted in organizing and in the beginning of manufacturing such sheeting by this company?

A. I did.

60 Q. At that time who were your associates in organizing this company?

A. Mr. A. J. Ray and the board of directors of the Janesville Cotton Manufacturing Company; I could not give all their names.

61 Q. Did either of your associates, and, if so, which, know anything about manufacturing cotton sheeting at the time of the organization of this company?

A. I don't know how much they did know about it. Mr. Ray had some knowledge of manufacturing cotton goods—been in the business—manufacturing print goods.

62 Q. Do you know where he obtained such knowledge and to what extent he had it?

A. What knowledge he obtained of manufacturing was in the town of North Adams.

63 Q. Do you know whether he knew before he came here and organized the old company of double L sheeting in the market?

A. I don't know whether he knew it or not.

64 Q. Did you ever hear him say that he knew of such sheeting before he came here?

A. I don't recollect that I ever did.

891 65 Q. When you were selecting your brand for that sheeting who conceived of or suggested the design adopted?

A. I am not positive who did conceive of that design; my business was to make the goods.

66 Q. Did you suggest any part of it?

A. Don't recollect as I did.

67 Q. What is your best impression about that?

A. My best impression is that the design we got up in the office.

68 Q. What is your impression as to who suggested the design?

A. Well, I don't know as I have any particular one to say that suggested it.

69 Q. Will you swear that you did not suggest it or any part of it?

A. I don't recollect that I suggested any part of it.

70 Q. Do you recollect that Mr. Ray suggested any part of it?

A. I do not.

71 Q. Is it not more than likely, in your opinion, that either he or you were instrumental in getting it up?

Objected to as not being cross-examination, not calling for facts, but asking the witness to guess.

A. At the time that that was got up I was very busy starting the mill. I knew little about the office affairs at the time; that

892 was not my business.

72 Q. Will you swear that you were not consulted about adopting a brand for the new mill?

A. I can't recollect whether I was consulted or not, it is so long ago.

73 Q. At the time this brand was selected is it not true that double L sheetings were well known in the trade?

A. I don't know how well known they are, not being in the business previous to that. I have seen them in the retail houses—double L goods.

74 Q. And you knew them as goods made by the Lawrence Manufacturing Company?

A. I have seen Lawrence double L's. I have seen Atlantic double L's in retail houses.

Question repeated.

A. Well, I have seen the Lawrence brand on them.

75 Q. Question repeated.

A. I don't know whether the Lawrence Manufacturing Company made them or not. I have seen the Lawrence brand on them. I suppose they made them.

76 Q. Why did you not put double L on your 3.45 goods?

A. On the heavy goods double L was not used by any of the manufacturers of the goods, to my knowledge.

Question repeated.

A. Why, I answered that question.

893 Question repeated.

A. Because double L wasn't used on that heft of goods by other manufacturers.

77 Q. What heft of goods did other manufacturers use double L upon?

A. I never weighed the goods.

78 Q. You put double L on your four-yard goods from the beginning, did you not?

A. We did.

79 Q. You did that, if I understand your previous answer, because other manufacturers of goods put double L on four-yard sheeting; is that correct?

A. Yes, sir.

80 Q. When did you go into the employ of the Janesville Cotton Mills?

A. January 1st, 1875.

Question repeated.

A. January 1st, 1875.

Mr. ELDRED: Not Janesville Cotton Mills.

WITNESS: Oh, the Janesville Cotton Manufacturing Company.

81 Q. Now answer the question. When did you go into the employ of the present company?

A. The 14th of May, 1886—that is, the Janesville Cotton Mills.

82 Q. Since that time have you branded any sheetings like Exhibit A?

A. I don't recollect positive when they did change the brand, not being in the office.

83 Q. Does the present defendant, the new company, brand its four-yard sheeting like Exhibit A; if not, wherein is the brand different?

894 A. They don't; the brand is one L with a bar across it, with the word double.

84 Q. In all other particulars it is alike?

A. It is alike except the letter- L L.

85 Q. Who were the officers of the old company?

A. Mr. A. J. Ray was agent; Wm. A. Lawrence, president; F. S. Eldred, treasurer.

86 Q. Who are the officers of the present company, the defendant in this case?

A. Dr. Henry Palmer is president; Geo. Sutherland, vice-president; A. J. Ray, secretary. There are no agents, I believe, except the board of directors.

87 Q. Do you know who suggested the leaving off of one L from the old brand and stamping the word "double" over the other L, which you now put on the new brand?

A. Not being with the company at the time that brand was changed—got up—I could not say; don't know.

88 Q. Haven't you heard any one say who suggested those changes?

A. No, sir.

89 Q. Don't you know that the old company was enjoined from stamping double L on its four-yard goods?

Objected to as incompetent.

A. I have heard something said of that kind, but I am not positive about it at all.

90 Q. How are the four-yard goods, made by the defendant company, spoken of?

A. I have heard them spoken of as being very good goods.

895 91 Q. Are they not called "Double L?"

A. Yes; they are called double L.

92 Q. The goods made by the old company were also called double L?

A. We used to call them "L L." They may be called "Double L."

93 Q. Do you swear that you never heard them called "Double L?"

A. I have heard them called "L L," and I have heard them called "Double L."

94 Q. With what class of goods do the double L's made by defendant company come into competition in the trade?

A. With all four-yard goods, 56 square.

95 Q. Can you mention the name of any four-yard goods that are special competitors of your double L goods?

A. Beaver Dam is one mill.

96 Q. Beaver Dam L L?

A. Yes, sir.

97 Q. Go on and mention the others.

A. Atlantic P, that is another four-yard goods; and Aurora L L—they make an L L, I believe; there was a Michigan L L—I don't know whether there are any made now or not; there are two or three different brands, that I don't recollect, of Southern goods, of the same grade of goods; and the Lawrence L L's; and I think there is a Massachusetts B B that is the same grade of goods. I guess that is about competition enough.

896 Adjourned until to-morrow morning at 8.30 o'clock, at same place.

8.30 A. M.

Examination resumed; same appearances.

98 Q. At the time that the old mill commenced putting double L's on their four-yard goods, is it not true that it was known by the directors of the company and by you that such goods would be put upon the market in competition with other four-yard goods branded with double L?

A. It was known they would come in competition with all four-yard goods of different brands.

99 Q. Including the four-yard goods branded with double L?

A. Well, all four-yard goods.

100 Q. Then I am to understand from your last answer that you mean that at the time the old company put double L on their four-yard goods you expected they would be put upon the market in competition with other four-yard goods branded double L, then in the market; is this not true? I desire an answer, yes or no, and then you are at liberty to make any explanation you think the answer calls for.

A. Haven't I answered that question twice?

101 Q. Question repeated. I am not on the witness stand
897 to answer your question, and I desire a categorical answer.

A. *A.* Yes.

102 Q. What four-yard goods branded with double L were in the market at the time the old company—that is, the Janesville Cotton Manufacturing Company—put double L L on its four-yard goods?

A. *A.* That is a question I am not familiar with, for the reason I was not in business and not familiar enough with the trade to know the four-yard goods and different brands.

103 Q. At that time did you know or had you ever heard of any four-yard goods branded with double L in the market except those made by the Lawrence Manufacturing Company?

A. I think I have seen four-yard goods branded Atlantic P.

104 Q. Question repeated.

A. As I said before, I think I have seen Atlantic P's that were called four-yard goods.

105 Q. You have twice evaded answering question 103; whether intentionally or not, I do not know; I request it to be repeated, and desire you to answer it categorically, yes or no.

Objected to on the ground that it is a gratuitous insult to the witness, who obviously mistook the question.

A. Didn't I answer that question properly? I said yes; Atlantic P of the four-yard goods. I don't know what other answer I can give to that.

898 106 Q. Question 103 is again repeated and explained orally to the witness.

A. I don't recollect as I ever did.

107 Q. Was there ever anything branded on the four-yard goods

stamped with double L by the old company that would indicate to a stranger that the goods were made by the Janesville Cotton Manufacturing Company?

Objected to on the ground that the witness has stated how they were branded, and what the brand would indicate to a stranger is a matter of inference or belief and not of fact.

A. The monogram indicates Janesville Cotton Manufacturing Company. The Badger State means the State of Wisconsin; and at that time the Janesville Cotton Mill was the only mill running in the State, and there was no occasion for a stranger to mistake the brand.

108 Q. Is it your opinion that the monogram composed of the letters "J. C. M. O." would indicate to a man who lived outside of the State of Wisconsin, and who had never heard of your company, that it was a monogram of the Janesville Cotton Manufacturing Company?

Objected to because the question does not correctly describe the monogram.

A. The monogram, you haven't got it as it reads.

109 Q. How does the monogram read?

899 A. "J. M. C. O.," as I understand it.

110 Q. Question 108 repeated, corrected as suggested by the witness.

A. I think the monogram in connection with the Badger State would lead any one to suppose they were made in Janesville.

111 Q. Is there anything on the stamp of the double L sheetings made by the Lawrence Manufacturing Company, said stamp being composed, as you have stated, of a bull's head and the words "Lawrence Mills sheetings," that would lead you to suppose that they were made by the Lawrence Manufacturing Company, if you did not know it otherwise? if so, what is it?

Objected to as incompetent, irrelevant, and immaterial.

A. The name being branded on the sheetings, The Lawrence Mills.

112 Q. The question is repeated and a categorical answer requested.

Same objection.

A. Why, yes; it is the brand.

113 Q. What brand?

A. Lawrence Mills sheetings.

114 Q. Does the Lawrence Mills sheetings convey to your mind, if you did not know it otherwise, that they were made by the Lawrence Manufacturing Company, of Lowell, Massachusetts?

A. That seems to me like the same question right over.

115 Q. Well, what is your answer to it, if it is the same question?

A. Yes.

900 116 Q. Do you know and did you not know in 1875 that at the town of Lawrence, in Massachusetts, there were cotton

mills manufacturing cotton sheetings which were put upon the market?

A. Yes.

117 Q. And now do you wish to be understood that knowing as you do now and did in 1875 that there were mills at Lawrence, Massachusetts, manufacturing and selling brown sheetings that you would suppose, without any other information, that the words "Lawrence Mills sheeting" stamped on sheetings were made by the Lawrence Manufacturing Company at Lowell, Massachusetts?

A. Yes.

118 Q. Are you not mistaken in saying that it was in 1875 that the old company adopted the brand like "Exhibit A?" If you are mistaken state when they did begin first to make this brand.

A. I think they commenced to make it during that year, but I can't state the time they adopted it.

119 Q. How many looms did the old company begin with in 1875?

A. 200.

120 Q. Did they continuously use these 200 looms in manufacturing double L sheetings?

A. Part of them were used for double L and part for other grades.

121 Q. What proportion of such looms and of the time was taken in manufacturing double L sheetings? Give the best estimate you can.

901 A. *A.* I tis a difficult question to answer, as we manufactured different goods; to meet the requirements of our customers we had to change our grades from one grade to another.

122 Q. When, if at all, did the old company increase its looms and to what amount?

A. I think it was the second year; I am not positive just the time without referring to the books.

123 Q. My question calls for what amount of increase now?

A. 200 looms.

124 Q. What would be the average output of double L sheetings made by the old company during the nine years you were with it? Give your best estimate.

A. I can't tell the average output without looking over the books.

125 Q. My question calls for your best estimate.

A. When we are running full, the 400 looms, I think we produce nearly three million yards a year.

126 Q. Will you state that during any one year of the nine years you were with the old company it run full time, 400 looms on double L sheetings?

A. No, sir; not one year full time on double L sheetings.

127 Q. Will you state that any one year the old company averaged 200 looms full time on double L sheetings?

A. I should think they did.

902 128 Q. How many bales of double L's did the old company make on an average per year while you were with it?

A. Well, I, not having the book-keeping to do, could not state how many they made; the production of double L's would be about 14

bales per week when we run full. I am not positive about that; it was not my part of the business; not fourteen bales per week, I mean fourteen bales per day.

129 Q. My former question, Mr. Bailey, asks for the average of bales per year during the nine years you were with it and for your best estimate.

A. It would require a little time to look over the production of the mill for that length of time; I could not answer.

130 Q. What is your best estimate? I have asked you this three times.

A. From four to five million yards per year of all grades.

131 Q. My questions have been, and I desire your attention to them, to give me your best estimate of the average number of bales, not yards, per year of double L's made by the old company during the nine years you were with it.

A. To give you my best estimate of that I should have to, as I said before, look it over.

132 Q. Give me your best estimate of the number of bales per year the old company has averaged of double L's during the nine years you were with it.

903 A. (After figuring.) About thirty thousand bales a year. No, thirty thousand for the nine years—3,756 bales. I should guess that that was about the production of L L goods when we were running full.

133 Q. Did you run full time during these nine years on double L's?

A. When we run the mill part of the looms run double L's.

134 Q. I now hand you a piece of sheeting; please state what it is. And ask to have it marked Exhibit B for identification.

A. That is what we call four-yard sheetings—four yards per pound—56 square. This is our present stamp that we now use at the mill—Janesville Cotton Mills.

Redirect examination:

135 Q. Do manufacturers of cotton sheetings ever put the same letters on goods of different weights and qualities?

Objected to as incompetent, immaterial, leading, and not proper redirect examination.

A. Well, I don't know of any that do. I have understood that the Atlantic folks have put L L on five-yard goods, although I never saw them.

COMPLAINANT'S COUNSEL: The last part of the answer objected to as hearsay and as volunteered by the witness.

904 136 Q. Do the Atlantic or any other companies put the same letters on different-weight goods manufactured by them at the same time?

Same objection.

A. Not that I know of.

137 Q. State whether or not the manufacturers of cotton sheetings put the different letters of the alphabet upon the different grades of sheetings to denote the weight and grade thereof.

Same objection.

A. They do.

138 Q. Do you know whether the cotton sheetings manufactured by the Lawrence Company, stamped L L, are 56 by 56 or 60 by 60 to the square inch count?

A. They are put down in the reporters as sixty square, but I have never counted them.

139 Q. Did you not testify on cross-examination that they were 56 by 56 to the square inch?

A. That is, our goods are 56 to the square inch.

140 Q. No; the Lawrence?

A. I don't recollect as I did.

141 Q. If you did so testify do you desire to correct it?

A. I desire to correct it if I so testified.

142 Q. Do you know of any sheetings stamped double L's as distinguished from L Ls, except those manufactured by the defendant, the Janesville Cotton Mills, as shown by Exhibit B of the defendant.

Same objection.

A. That is the only sheetings I know that are marked
905 "double L."

143 Q. COUNSEL: That is all.

CHESTER BAILEY.

It is stipulated that the Exhibits A and B referred to in the testimony of Chester Bailey may be retained by the respective counsel and produced on the hearing, with the same force and effect as though attached hereto.

STATE OF WISCONSIN, } ss:
Rock County, }

I, F. C. Grant, a notary public in and for said county, do hereby certify that the above deposition was taken before me, at the office of Pease and Ruger, in the city of Janesville, in said county, beginning on the ninth day of November, A. D. 1886, at ten c'clock in the forenoon, from which time an adjournment was taken by consent of parties until two o'clock in the afternoon of the same day; that it was taken at the request of the defendants upon verbal interrogatories; that it was reduced to writing by myself; that it was taken to be used in the actions entitled upon the first page thereof now pending in said courts; that a notice, of which the annexed is a copy, was served upon the complainant's counsel on the third
906 day of November, A. D. 1886; that said deponent, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth relative to said causes, and that said deposition was carefully read to said deponent and then subscribed by

him; that I am not of counsel or attorney for any of the parties, nor in any way interested in the event of said causes.

F. C. GRANT,
Notary Public for Wis.

N't'y fees, $7.45, paid by defendants.

United States Circuit Court for the Western District of Wisconsin.

LAWRENCE MANUFACTURING COMPANY, Comp't,
vs.
JANESVILLE COTTON MILLS, Def't.

Take notice that the testimony of A. J. Ray and —— Bailey, of Janesville, Rock county, Wisconsin, will be taken in the above-entitled cause on behalf of the defendant, before F. C. Grant, a
907 notary public, at the office of Pease and Ruger, in the city of Janesville, State of Wisconsin, on the 9th day of November inst., at ten o'clock in the forenoon.

Dated November 2nd, 1886.

I. C. SLOAN AND E. W. HELMS,
Sol'rs for Defendants.

To Raymond and Rainey, sol'rs for comp'ts.

Service of above notice accepted this 3rd November, 1886.

RAYMOND AND RAINEY,
For Compl't.

908 UNITED STATES OF AMERICA,
Western District of Wisconsin:

At a special term of the circuit court of the United States of America for the western district of Wisconsin, held at Madison, in said district, on the 26th day of July, A. D. 1887.

Present and presiding, the Honorable Romanzo Bunn, judge.

Among other, the following proceedings were had, to wit:

LAWRENCE MANUFACTURING COMPANY
vs.
JANESVILLE COTTON MILLS. } In Equity.

This cause came on to be heard and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz: That the complainant's said bill of complaint be, and the same is hereby, dismissed, upon the merits thereof, with costs — be taxed in favor of defendant, and which are taxed at $335.05, for which let execution issue as at law.

And thereupon the complainant filed its petition praying for an appeal, which was granted by the court upon the complainant entering into a bond in the sum of five hundred dollars, to be approved by the court within thirty days.

Date, July 26, 1887.

By the court:

R. BUNN, *Judge.*

909 *Petition for Appeal.*

Circuit Court of the United States, Western District of Wisconsin.
In Chancery.

LAWRENCE MANUFACTURING COMPANY
v.
JANESVILLE COTTON MILLS.

To the honorable the judges of the circuit court for the western district of Wisconsin:

Your petitioner, The Lawrence Manufacturing Company, complainant in the above-entitled cause, respectfully represents—

That heretofore, at the present term of said court, to wit, July 26th, 1887, the opinion and decree of said court was filed dismissing the said bill of complaint for want of equity; that said complainant respectfully excepts to the findings of the court and to each of them as contrary to both the law and the evidence, and thereupon prays an appeal to the Supreme Court of the United States.

Your petitioner further respectfully represents that the main purpose and the subject-matter of this suit is to establish the validity and legality of the exclusive right in said complainant to the use of "L L" as a trade-mark upon brown cottons of the said
910 third general class, as in said bill of complaint heretofore filed herein, which your petitioner prays may be taken as a part of this petition, is set forth; that the said exclusive right to the use of said trade-mark has been in the past and would be in the future of the value to your petitioner at least of upwards of fifty thousand dollars ($50,000); that your petitioner is informed, advised, and believes that the damages due from this defendant on account of the use complained of in said bill of complaint heretofore, if said exclusive use be so confirmed to your petitioner, would, upon a proper accounting, be found to be, exclusive of costs, a sum in excess of five thousand dollars; that your petitioner is informed, advised, and believes that the said defendant is continuing and will continue the use of the said design so claimed by your petitioner to be an infringement of said trade-mark, and that if said exclusive use be confirmed to your petitioner by the Supreme Court of the United States the damages thereupon to be recovered in this cause by your petitioner will be a sum in excess of fifteen thousand dollars; further, that the effect of the opinion and judgment of this court, both in law and in fact, is to cancel and annul said trade-mark so claimed by your petitioner as to the parts of and
911 parties in the United States pending the opinion and mandate of the Supreme Court of the United States herein, and that the opinion and mandate of the said Supreme Court in this present cause upon such an appeal as is now prayed would have the effect both in fact and in law either to confirm said exclusive use to your petitioner or to cancel and annul said trade-mark so claimed by your petitioner, and that said alleged trade-mark and said ex-

clusive use are of the value to your petitioner of upwards of fifty thousand dollars as aforesaid.

Whereupon your petitioner prays as it has heretofore herein prayed.

THE LAWRENCE MANUFACTURING COMPANY,
By RAYMOND & RAINEY.

STATE OF ILLINOIS, } ss:
County of Cook, }

John I. Veeder, being first duly sworn, deposes and says that he is an agent of the said Lawrence Manufacturing Company; that he has read the foregoing petition; that he is familiar with the facts therein and in the said bill of complaint set forth; that the actual values and damages as to said trade-mark so claimed by said
912 petitioner are in excess of the amounts named in said petition, and that said petition is true, except so far as is therein stated on information and belief, and as to the same this affiant believes it to be true.

JOHN I. VEEDER.

Subscribed and sworn to before me this 25th day of July, A. D. 1887.

P. H. T. MASON,
Notary Public in and for the County in the State Aforesaid.

And afterwards, on the 8th day of July, A. D. 1887, came the complainants, by their solicitors, and filed their bond on appeal as follows:

913 Circuit Court of the United States, Western District of Wisconsin. In Chancery.

LAWRENCE MANUFACTURING COMPANY
vs.
JANESVILLE COTTON MILLS.

Know all men by these presents that we, The Lawrence Manufacturing Company of Massachusetts, principal, and Lucius M. Sargent, as surety, are held and firmly bound unto The Janesville Cotton Mills, of Janesville, Wisconsin, and to its successors and assignes, in the penal sum of five hundred dollars ($500.00), well and truly to be paid, and thereunto we bind ourselves jointly and severally and our and each of our successors, heirs, executors, and administrators, truly by these presents.

In witness whereof the said Lawrence Manufacturing Company has caused these presents to be signed by its treasurer and its corporate seal to be hereto affixed, and the said Lucius S. Sargent
914 has hereunto set his hand and seal this first day of August, A. D. 1887.

Whereas the above-named Lawrence Manufacturing Company

has taken an appeal to the Supreme Court of the United States to reverse the certain decree entered in the above-entitled cause by the said circuit court for the western district of Wisconsin:

Now, therefore, the condition of this obligation is such if the said Lawrence Manufacturing Company shall prosecute its said appeal to effect and shall answer all costs and damages if it shall fail therein, then this obligation shall be void; otherwise to remain in full force and effect.

[SEAL.] LAWRENCE MANUFACTURING COMPANY,
By LUCIUS M. SARGENT, *Treasurer.*
LUCIUS M. SARGENT. [SEAL.]

U. S. Circuit Court, District of Massachusetts, *ss:*

915 This is to certify that Lucius M. Sargent, personally known to me, and to be the treasurer of the Lawrence Manufacturing Company, appear*ing* before me this 1st day of August, A. D. 1887, and acknowledged the execution of the foregoing bond as having been made by him personally and also as treasurer of the said Lawrence Manufacturing Company, he being thereunto duly authorized, all for the purposes therein indicated.

[SEAL.] JOHN M. STETSON,
Clerk of the U. S. Circuit Court for the District of Massachusetts.

I hereby approve this bond this 8th day of July, 1887.
R. BUNN, *Judge.*

916–918 UNITED STATES OF AMERICA, *Western District of Wisconsin,* } *ss:*

I, F. M. Stewart, clerk of the circuit court of the United States of America for the western district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate with the originals now in my custody, and they are true copies of their respective originals and are correct transcripts therefrom and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Madison, in the said western district of Wisconsin, this 27th day of August, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. M. STEWART, *Clerk.*

* * * * * * *

919 *Stipulation.*

In the Supreme Court of the United States.

LAWRENCE MANUFACTURING COMPANY, Appellant,
vs.
JANESVILLE COTTON MILLS, Appellee.
} No. 1040.

On appeal from the circuit court of the United States for the western district of Wisconsin.

It is hereby stipulated and agreed that in the above-entitled cause the pleadings, the decree and opinion of the circuit court, and the depositions of Chester Bailey, A. J. Ray, George G. Sutherland, P. H. T. Mason, and J. H. Raymond, p. 24 Special Janesville Testimony, the articles of incorporation of the Janesville Cotton Mills, and the certified copies of the trade-mark of the Janesville Manufacturing Company only need be printed, but that in said cause the printed record in case No. 1039, entitled Lawrence Manufacturing Co. *vs.* Tennessee Manufacturing Co., now pending on appeal in said Supreme Court, may be used: Provided, That enough copies of the record are printed to furnish each of the counsel in the first above-entitled cause with one copy thereof: And provided further, That the practice of this court permits the printed case in one cause to be used in another.

Dated October 4th, 1887.

J. H. RAYMOND,
Sol'r for Appellant.
I. C. SLOAN,
Sol'r for Def't.

920 [Endorsed:] Supreme Court U. S. 1887, October term. No. 1040. The Lawrence Manufacturing Co., app't, *vs.* The Janesville Cotton Mills. Stipulation as to printing record.

[Stamped:] Office Supreme Court U. S. Filed Oct. 15, 1887. James H. McKenney, clerk.

Endorsed on cover: W. Wisconsin C. C. U. S. No. 1040. The Lawrence Manufacturing Company, appellant, *vs.* The Janesville Cotton Mills. Filed September 9, 1887.

921 In the Supreme Court of the United States. October Term, 1887.

LAWRENCE MANUFACTURING COMPANY
v.
JANESVILLE COTTON MILLS. } No. 1040.

Counsel for the respective parties in the above-entitled cause hereby certify to a diminution in the record in that the transcript forwarded by the clerk of the circuit court to the clerk of the Supreme Court omits complainant's replication and also letters patent for trade-mark, made an exhibit in A. J. Ray's testimony, and also certified copy of the articles of incorporation of the Janesville Cotton Mills, defendant, a copy of all which is herewith forwarded to the clerk of the Supreme Court by the clerk of the circuit court with the stipulation and request that the same shall be filed and printed in the record at the proper places.

November 2nd, 1887.

J. H. RAYMOND,
Solicitor for Appellant.
I. C. SLOAN,
Solicitor for Appellee.

WESTERN DISTRICT OF WISCONSIN, *ss:*

I, F. M. Stewart, clerk circuit court, district aforesaid, do hereby certify that the above is the original stipulation of the solicitors for the respective parties in Lawrence M'f'g Co. *vs.* Janesville Cotton Mills.

Witness my hand and seal of said court, at Madison, this 2d day of November, A. D. 1887.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. M. STEWART, *Cl'k.*

922 *The Replication of the Lawrence Manufacturing Company, Complainant, to the Answer of the Janesville Cotton Mills, Defendant.*

Circuit Court of the United States, Western District of Wisconsin.
In Chancery.

LAWRENCE MANUFACTURING COMPANY
v.
JANESVILLE COTTON MILLS.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other

matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its bill it has already prayed.

September 14th, 1886.

RAYMOND & RAINEY,
Solicitors for Complainant.

923 WESTERN DISTRICT OF WISCONSIN, *ss:*

I, F. M. Stewart, clerk of the circuit court for said district, do hereby certify that the foregoing is a true copy of the replication filed in within-entitled cause, omitted from the transcript forwarded by me to clerk Supreme Court on appeal, and now forwarded to the clerk Supreme Court to be printed in the record of said cause in its proper place.

Witness my hand and seal of said court, at Madison, this 2d day of November, 1887:

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. M. STEWART, *Clerk.*

924 DEF'TS' EXHIBIT No. 2. F. C. G., Notary.

Trade-Mark for Cotton Sheetings.

No. 4666.

The United States of America to all whom it may concern:

This is to certify that by the records of the United States Patent Office it appears that Janesville Cotton Manufacturing Company, of Janesville, Wisconsin (a corporation created by authority of the State of Wisconsin), did, on the twenty-sixth day of April, 1876, deposit in said office for registration a certain trade-mark, a copy of which is hereto annexed, and the date of the receipt thereof was duly noted and recorded in words and figures as follows, to wit: "Patent Office, U. S. A., Apr. 26, 1876;" that it deposited therewith a statement, a copy of which is also hereto annexed, and a declaration under the oath of A. J. Ray, an officer of said corporation, to the effect that the party claiming protection for the said trade-mark has a right to the use of the same, and that no other person, firm, or corporation has the right to such use either in the identical form, or having such near resemblance thereto as might be calculated to deceive, and that the description and *fac-similes* presented for record are true copies of the trade-mark sought to be protected; and having made the payment of a fee of twenty-five dollars in the same manner and for the same purpose as the fee required for patents, and having complied with the regulations in such cases prescribed by the Commissioner of Patents, and in all other respects complied with the act of Congress in such case made and provided, the said

BADGER
SHEETING

TRADE-MARK.

2 Sheets—Sheet 1.

JANESVILLE COTTON MANUFACTURING CO.

COTTON SHEETINGS.

No. 4,666. Registered May 22, 1877.

BADGER
SELECTRIC

TRADE-MARK. 2 Sheets—Sheet 2.

JANESVILLE COTTON MANUFACTURING CO.

COTTON SHEETINGS.

No. 4,666. Registered May 22, 1877.

trade-mark has been duly registered and recorded in the said Patent Office, and protection for the same will remain in force for thirty years from the twenty-second day of May, one thousand eight hundred and seventy-seven, unless sooner terminated in accordance with section 78 of chapter CCXXX, act of Congress approved July 8, 1870 (secs. 4937, 4947 Rev. Stats.).

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed this twenty-second day of May, 1877, and of the Independence of the United States the one hundred and first.

Given under my hand at Washington, D. C.

[Seal Patent Office United States of America.]

ELLIS SPEAR,
Commissioner of Patents.

(Here follows diagram marked pp. 925, 926.)

927 UNITED STATES PATENT OFFICE.

JANESVILLE COTTON MANUFACTURING COMPANY, of Janesville, Wis.

Trade-Mark for Cotton Sheetings.

Statement of trade-mark No. 4666, registered May 22, 1877; application filed April 26, 1876.

To all whom it may concern:

Be it known that the Janesville Cotton Manufacturing Company (a corporation duly organized under the laws of the State of Wisconsin), doing business at the city of Janesville, county of Rock and State of Wisconsin, has adopted for its use a trade-mark for cotton sheetings, of which the following specification is a full, clear, and exact description:

The said trade-mark consists of the words "Badger State sheeting," with a monogram in the center of the space, said words surrounding the same. The said monogram is composed of the letters "J. M. Co.," interwoven, being the abbreviation for Janesville Manufacturing Company.

These have been generally arranged as shown in the accompanying drawing, with scroll ornamentations surrounding the monogram, as shown in the accompanying *fac-simile*.

The figure of a badger may be, and sometimes is, used in connection with the monogram, and the ornamentation and arrangement of words and letters may be changed at pleasure without materially changing the character of the trade-mark, the two essential features of which are the monogram embracing the letters "J. M. Co." and the words Badger State.

This trade-mark the said corporation has used in its business for nine months last past. The particular goods upon which it has used it are made of cotton, and known as "sheetings," and it has been

the custom to print it in blue ink upon the outside of each piece of the manufactured goods.

[Seal Patent Office United States of America.]

JANESVILLE COTTON M'F'G CO.,
By A. J. RAY, *Sec'y.*

Witnesses:
S. HENRY HUDSON.
S. A. HUDSON.

928 WESTERN DISTRICT OF WISCONSIN, *ss:*

I, F. M. Stewart, clerk of the U. S. circuit court for western district of Wisconsin, hereby certify that the foregoing are the letters patent filed in the case of Lawrence Man'f. Co. *vs.* Janesville Cotton Mills, and same is forwarded to clerk Supreme Court, in accordance with stipulation hereto annexed.

Witness my hand and seal of said court, at Madison, this 2d day of November, A. D. 1887.

[Seal U. S. Circuit Court, Western District of Wisconsin.]

F. M. STEWART, *Cl'k.*

929 *Janesville Cotton Mills.*

These articles of association, made, signed, and acknowledged this twelfth day of March, A. D. 1886, by and between William A. Lawrence, Erastus C. Smith, Frederick S. Eldred, Henry Palmer, and George G. Sutherland, all adult persons resident in the city of Janesville, in the State of Wisconsin, witness:

Article 1. The said William A. Lawrence, Erastus C. Smith, Frederick S. Eldred, Henry Palmer, and George G. Sutherland hereby agree to and declare that they associate together for the purpose of forming a corporation under and pursuant to the Revised Statutes of the State of Wisconsin, and laws amendatory thereof.

The business and purposes of said corporation shall be manufacturing and selling cotton goods.

Article 2. The name of such corporation shall be Janesville Cotton Mills, and its location shall be at the city of Janesville, in the county of Rock and State of Wisconsin.

Article 3. The capital stock shall be one hundred and fifty thousand dollars divided into fifteen hundred shares of one hundred dollars each, numbered consecutively in progressive numbers from 1 to 1,500.

Article 4. The general officers of such corporation shall be a president, vice-president, secretary, and treasurer. The offices of secretary and treasurer may be held by the same person. The number of directors shall be eleven.

Article 5. Subject to the control of the board of directors, the principal duties of the several general officers shall be as follows:

930 President.—The president shall have and exercise general supervision and control over all the business and affairs of such corporation, and, together with the secretary, shall execute all

conveyances and contracts and sign all the stock certificates to be executed or issued by such corporation.

Vice-president.—The vice-president shall perform all the duties and exercise all the authority of the president whenever the president shall be absent or unable to act.

Secretary.—The secretary shall have charge of the corporate seal, books, papers, and correspondence of such corporation, excepting such books as the treasurer shall be required to keep, and such contracts, accounts, vouchers, and papers as shall be necessarily *be* in charge of the treasurer in the performance of his duties, but all such contracts, vouchers, accounts, and papers so coming into the hands of the treasurer shall be by him delivered to the secretary as soon as the treasurer's duties respecting the same shall have been performed.

Treasurer.—The treasurer shall attend to the collection, safe keeping, and disbursement of all moneys due to and owing by such corporation, and shall take proper vouchers for all moneys disbursed, and keep accurate books of account of all moneys received and disbursed. Each of the forementioned general officers shall, in addition to the duties and authority hereinbefore specified, have and exercise all the authority and duties usually incident to their respective offices, and shall have such further authority and perform such further duties as shall be prescribed by the by-laws or conferred or required by the board of directors.

Article 6. All persons holding stock according to the reg-
931 ulations of such corporation, and they only shall be members thereof.

Article 7. It is contemplated that such corporation shall acquire the title to and become the absolute owner of all and singular the real and personal property of the Janesville Cotton Manufacturing Company, subject to all existing liens thereon, and the said Janesville Cotton Mills is, in such case, to assume and pay all indebtedness of said Janesville Cotton Manufacturing Company due or to become due *or to become due* upon its promissory notes or other written contracts which are not secured by lien upon its property, but is not to assume any indebtedness or liability secured by lien upon such property or evidenced otherwise than as above stated.

Subscriptions to the capital stock of said Janesville Cotton Mills may be paid in by or with notes or bonds executed by said Janesville Cotton Manufacturing Company due or to become due if the payment thereof is either assumed by or secured by lien upon the property of said Janesville Cotton Mills.

In witness whereof the said associates have, at the city of Janesville, in said county and State, and on the day and year first above written, hereunto set their hands and seals.

WILLIAM A. LAWRENCE. [SEAL.]
ERASTUS C. SMITH. [SEAL.]
FREDERICK S. ELDRED. [SEAL.]
HENRY PALMER. [SEAL.]
GEORGE G. SUTHERLAND. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM RUGER.
N. J. EMERY.

932 STATE OF WISCONSIN, } ss:
Rock County, }

On this twelfth day of March, A. D. 1886, personally came before me the above-named William A. Lawrence, Erastus C. Smith, Frederick S. Eldred, Henry Palmer, and George G. Sutherland, to me known to be the persons who executed the foregoing instrument, and acknowledged the same.

And I further certify that each of said persons is an adult person residing in said county and State.

WILLIAM RUGER,
Notary Public for Wisconsin.

STATE OF WISCONSIN, } ss:
Rock County, }

On this 20th day of April, 1886, personally appeared before me Frederick S. Eldred and Henry Palmer, who, being duly sworn, declare the above articles of association to be a true copy of the original articles.

FREDERICK S. ELDRED.
HENRY PALMER.

{Seal H. H. Blanchard, Att'y-at-Law and Notary Public, Janesville, Rock Co., Wis.}

H. H. BLANCHARD,
Notary Public, Rock Co., Wis.

STATE OF WISCONSIN, *ss:*

DEPARTMENT OF STATE.

Received and filed this 21st day of April, A. D. 1886.
ERNST G. TIMME,
Secretary of State.

933 UNITED STATES OF AMERICA.

STATE OF WISCONSIN, } ss:
Department of State, }

To all to whom these presents shall come:

I, Ernst G. Timme, secretary of state of the State of Wisconsin, do hereby certify that the foregoing copy of articles of association of the Janesville Cotton Mills has been compared by me with the verified copy of such articles on file in this department, and that the same is a true copy thereof and of the whole of such articles.

In testimony whereof I have hereunto set my hand and affixed my official seal, at the capitol, in the city of Madison, this sixteenth day of May, A. D. 1887.

[Seal of the Secretary of State, State of Wisconsin.]

ERNST G. TIMME,
Secretary of State.

934 WESTERN DISTRICT OF WISCONSIN, *ss:*

I do hereby certify that the foregoing is the exhibit in A. J. Ray's testimony in Lawrence Manufacturing Co. *vs.* Janesville Cotton Mills, referred to in annexed stipulation of parties.

Witness my hand and seal of said circuit court for dist. aforesaid Nov. 2, 1887.

F. M. STEWART, *Cl'k.*

[Endorsed:] Exhibit A. Rec'd in evidence at the final hearing.

935 [Endorsed:] Supreme Court U. S. 1887, October term. No. 1040. The Lawrence Manufacturing Co., app't, *vs.* The Janesville Cotton Mills. Stipulation of counsel & addition to record.

[Stamped:] Office Supreme Court U. S. Filed Nov. 11, 1887. James H. McKenney, clerk.